EXHIBIT "12"

PETITIONER-PLAINTIFF, LEQAA KORDIA'S MOTION FOR PRELIMINARY INJUNCTION

Transcript of June 5, 2025 Motion Hearing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LEQAA KORDIA, PETITIONER,	)	
VS.	)	No. 3:25-CV-1072-L-BT
KRISTI NOEM, et al., RESPONDENTS.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE
JUNE 5, 2025
DALLAS, TEXAS

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(PROCEEDINGS BEGAN AT 10:05 AM.)

THE COURT SECURITY OFFICER: All rise.

THE COURT: Good morning. Please have a seat. All right.

We are going to go on the record in *Kordia versus Noem, et al.* It is Northern District of Texas Case 3:25-CV-1072-L-BT.

Who is here for the Petitioner?

MR. SIEGEL: Your Honor, Charles Siegel with my partner Caitlyn Silhan from Waters and Kraus here for the Petitioner, and Travis Fife from Austin, Sabrine Mohamad from New Orleans, and Golnaz Fakhimi from New York, will be presenting argument.

THE COURT: Very well. All three of you will argue?

MR. FIFE: Just me, Your Honor. Travis Fife from the Texas Civil Rights Project.

THE COURT: Thank you.

And for Respondent?

MR. STOLTZ: Brian Stoltz, Your Honor, on behalf of the Respondents.

THE COURT: All right. Thank you very much.

I'm listening.

MR. FIFE: Your Honor, before we begin today, we just had a couple of procedural housekeeping issues we'd like

to take care of at the start, if that's all right with Your Honor.

THE COURT: Well, let's see what they are.

MR. FIFE: The first issue was just that, as the Court ordered, Ms. Kordia is listening from Prairieland Detention Facility. We had two attorneys go there this morning to be with her, and we just wanted to identify that they emailed facility staff last night saying that they would be there. And I had the chance to confer with opposing counsel quickly before we went on the record today, and it sounds like, from their perspective, there's nothing they can do. But we just wanted to put that on the record that the two attorneys were denied access to Prairieland.

THE COURT: So, I have -- I'm not sure what you're asking me. You just want to make a record of that?

MR. FIFE: Yes, Your Honor.

THE COURT: All right.

MR. FIFE: It sounds like -- and correct me if I'm wrong -- but there's nothing to be done right now, and we're prepared to move forward.

THE COURT: Are you asking me to try to do something?

MR. FIFE: No, Your Honor. We are, like you said, we are just making a record of it.

THE COURT: Okay.

MR. FIFE: The second quick procedural issue is, again, just to confirm for subsequent proceedings of the record on the Preliminary Injunction, we would move to admit both parties' Appendices for the purposes of the Preliminary Injunction. Again, I conferred with opposing counsel, and it sounds like there's no objection from them. And, again, this is just doing our due diligence.

THE COURT: All right. Is that the totality of the evidence that the Petitioner will be presenting is included in the Appendix?

MR. FIFE: Yes, Your Honor. And the Verified Petition.

THE COURT: And, for the Government, is the entirety of the evidence that you want before the Court included in the Appendix?

MR. STOLTZ: Yes, Your Honor.

THE COURT: Is that all?

MR. FIFE: Yes, Your Honor.

THE COURT: Okay. I will request, since we are livestreaming these proceedings, that you make your argument from the podium because I think that that offers the equipment the best opportunity to pick up the sound.

MR. FIFE: Thank you, Your Honor.

Again, my name is Travis Fife from the Texas Civil Rights Project representing Ms. Leqaa Kordia.

I'd like to make three points today:

Number one, this Court has jurisdiction and the authority to grant the Preliminary Injunction Ordering Release that we're here today to discuss.

Number two, Ms. Kordia has demonstrated a substantial likelihood on the merits warranting interim release.

Number three, the equities of this case present extraordinary circumstances that demand immediate injunctive relief to rectify irreparable harm.

But before I turn to the merits of the argument before Your Honor, I'd like to just briefly introduce Ms. Kordia.

Ms. Kordia is a 32-year-old Palestinian woman and practicing Muslim. Since 2016 when she lawfully entered the United States, she's lived among family, close friends, and her community. We also have five family members here who made the journey in a show of support for Ms. Kordia, including her mother who she would live with if she were released through this motion.

But today, Ms. Kordia is confined 1,500 miles from home at the Prairieland Detention Facility because the President disagrees with her support for Palestinian rights. We know this through uncontested record evidence at Petitioner's Exhibit 1-A through 1-I. That includes a

statement from the campaign trail where then-candidate Donald Trump said he sought to set the movement for Palestinian rights back, quote, 25 to 30 years. It includes Executive Orders that authorize the Department of Homeland Security and other immigration officers to investigate, arrest, and detain, and attempt to deport non-citizens who demonstrated in support of Palestinian rights.

And, of course, it includes two press releases from DHS themselves naming Ms. Kordia and identifying her support for Palestinian rights.

And, if the Court needed any more confirmation, just two weeks ago, the Department of Justice filed a brief in the Mahmoud Khalil case stating that Ms. Kordia's confinement was, quote, related to the Israel-Palestine conflict.

This case also presents extraordinary circumstances. As I said, Ms. Kordia is a practicing Muslim, and since she's been confined, she has not had a single Halal meal, and the conditions in the facility are so disgusting that she feels unworthy of God and unable to pray. What's more, tonight, as she has for much of the last two and a half months, she will sleep on the ground surrounded by cockroaches and other bugs and wake up tomorrow morning without the necessary requirements for her to practice her faith.

Now, first on jurisdiction. This case falls squarely within the Court's core habeas jurisdiction under 28 U.S.C. Section 2241. In Respondents' view, what would otherwise be within the core of this Court's habeas jurisdiction, the INA strips this Court's jurisdiction because Section 1226(a), the statute allegedly authorizing Ms. Kordia's detention, uses the word "may."

On their view, this "may" grants them unlimited discretion to detain people for whatever reason, whether that be their protected speech, their religion, or the color of their skin.

On their view, Sections 1226(e) and 1252(a)(2)(B), little Roman Numeral two, (ii), strip this Court's jurisdiction because any detention decision they make is discretionary. That view is wrong and foreclosed by over 20 years of Supreme Court and Fifth Circuit precedent.

The first case that rejects their argument is *Zadvydas*, which we cite in both our opening brief and reply brief. There in *Zadvydas*, the Government made exactly the same argument, which is that Section 1231(a)(6), another immigration detention statute, used the word "may," so the prolonged confinement of people under Section 1231(a)(6) was discretionary, and the Supreme Court lacked jurisdiction. The Supreme Court rejected that argument and recognized that where the habeas claim challenges the constitutional limits

of the Government's detention power, that that is not discretionary because the Government lacks the discretion to exceed its constitutional limitations.

Ms. Kordia's claims operate exactly the same way. Her argument is not that Respondents have made an unwise or unreasonable decision, but rather that they have exceeded the constitutional limits of their power by using whatever discretion they have under Section 1226(a) to suppress protected activity, which violates the First Amendment, and they don't have discretion to do.

The Supreme Court reiterated this view of habeas jurisdiction in *Jennings versus Rodriguez*, which concerns Section 1226(e). There, a putative class of Petitioners, including those detained under Section 1226(a), challenge the Government's ability to detain them indefinitely without periodic every-six-month bond hearings. Again, the Government said Section 1226(e) precludes the Court's review because prolonged detention is discretionary.

The plurality of the Supreme Court said, similar to *Zadvydas*, no, these Petitioners are challenging not your exercise of lawful discretion, but rather the statutory limits on your detention power in the first place, which isn't discretionary because the Government lacks the discretion to exceed the statutory or constitutional limits of its power.

The last case that makes the jurisdictional dispute open and shut in favor of Ms. Kordia is *Najera versus United States*, which is the 2019 Fifth Circuit case we cite in our reply brief. There, the Plaintiff brought a false arrest claim against the Government on the view that because he had temporary protected status, his confinement was illegal.

Once again, the Government's arguments in *Najera* exactly match the Respondents' argument here, which is that our decision to detain that person under Section 1226(a) is discretionary. The Fifth Circuit, in a unanimous panel decision, said 1226(e) does not foreclose jurisdiction because the Petitioner's challenge go to the statutory limits of the Government's detention power.

Again, Ms. Kordia's claims here fall exactly within that line of cases, which say, because she challenges not the individual decision of the immigration judge or the DHS officers that arrested her, but rather the constitutional limits of Respondents' power.

Now, in large part, Respondents stake their jurisdictional arguments on a 2000 case, *Loa-Herrera*. As we pointed out in our reply brief, that case predates not only *Zadvydas*, *Jennings*, and *Najera*, but also other cases, *Demore*, which we cite in our brief, and *Nielsen versus Preap*, which is a 2019 decision reaching the same jurisdictional

conclusions that we've urged Your Honor to draw here today and in the papers.

But I want to make an additional point than what we raise in our briefs today, which is that their broad reading of *Loa-Herrera* -- not even the own district court cases that they rely on -- adopted such a broad view as Respondents have.

In *Maramba*, for example -- that's the Judge Stickney opinion that Respondents cite in their brief, and we also identify as supporting our review in our reply -- in *Maramba*, Judge Stickney was faced with two claims. The first was that the Petitioner had challenged the amount of bond the immigration judge set because it was unaffordable for the Petitioner. I think it was about a hundred thousand dollars. The second claim was that his detention under Section 1226(a) exceeded constitutional limitations.

Judge Stickney recognized the holding in *Loa-Herrera*, but narrowed it to only preclude the discretionary bond decision; meaning, that a habeas court cannot question the bond an immigration judge set or the way that an immigration judge weighed the evidence. But as to the challenge under the Due Process Clause of prolonged Section 1226(a) confinement, Judge Stickney exercised jurisdiction and reached the merits of that claim.

The last point I'd make on jurisdiction is where

I started, which is that on the Government's view, the Respondents can detain someone for any reason whatsoever regardless if they have a constitutional purpose, regardless of if it's in retaliation for speech, or regardless if it's based on the color of their skin. The Supreme Court, since *INS versus St. Cyr*, through *Jennings*, has consistently instructed courts to reject such broad readings of the INA's jurisdiction stripping provisions because doing so would foreclose any avenue of judicial relief for Petitioners like Ms. Kordia who present colorable constitutional claims.

And, if we just get really practical with what Respondents' view would do, it would mean that there is no forum to present Ms. Kordia's constitutional claims because they've conceded that the IJ and the BIA in the agency proceedings don't have jurisdiction to hear the constitutional claims that are currently before the Court. And, similarly, there's no meaningful Fifth Circuit review because the INA -- the INA makes you go to the Fifth Circuit at the end once you have a final order of removal.

And, so at that point Ms. Kordia would've already had to suffer the prolonged unconstitutional confinement. And, so, it wouldn't rectify the unconstitutional injuries.

Fifth Circuit review on a petition for review also wouldn't be meaningful because, under Section 1252(a), the Fifth Circuit is bound by the record developed in the

immigration proceedings. But, as Respondents recognize, at Page 10 to 11 of their brief, the bond proceedings; meaning, the proceedings that go to why and whether she should be confined, are totally separate from the removal proceedings.

And, so if she were to bring her claims on a petition for review to the Fifth Circuit at the end of her immigration proceedings, there wouldn't be a record for the Fifth Circuit to review, and even if there were, they're not allowed to resolve fact disputes.

THE COURT: But, I thought you told me you weren't seeking judicial review of the bond determination.

MR. FIFE: That's right, Your Honor. And I'm sorry if my explanation of that process caused confusion.

To be absolutely clear, nothing in this case challenges the discretionary decision of the immigration judge or her removal proceedings. The only thing I meant was about, if on Respondents' view, the only way we could seek federal court review was at the end of the case that there would be no record of why she was detained.

And, so my point was just to why the Fifth Circuit -- why a petition for review to the Fifth Circuit would not be meaningful judicial review for the constitutional claims.

But, yes, Your Honor is absolutely correct.

And, so because, both as a legal matter and just

a practical matter, Respondents' view would foreclose any judicial review of Ms. Kordia's constitutional claims. It would trigger all of the concerns that we identify in our reply brief in terms of suspending the Writ of Habeas Corpus, which, at its historical core, is to test the legality of executive detention.

I'm happy to answer any further questions on jurisdiction, but I'd also like to address this Court's authority to issue the relief we seek, which I don't think was really addressed in Respondents' brief, which is the power of this Court sitting in habeas jurisdiction to issue either a Preliminary Injunction Ordering Release or to, in this Court's inherent equitable authority, ordering release pending bail.

And the way that we think about the motion before the Court is that it offers two sources -- is that our opening brief offers two sources of authority for the Court to order release on bail.

The first is Rule 65 of the Federal Rules of Civil Procedure, which is the Ordinary Preliminary Injunction factors: the likelihood of success on the merits, the irreparable harm, and the equities, which, in this case, merge because the Government is the opposing party; meaning, is a Preliminary Injunction in the public interest.

The second source of authority is what the Fifth

Circuit identified in the *Calley* case we cite in both our briefs, which says that, as incidental to this Court's habeas jurisdiction, a habeas court also has the power to release a Petitioner on bail if they demonstrate substantial claims likely to succeed on the merits and extraordinary circumstances.

Now, an important point about the *Calley* framework is that it developed in the post-conviction context; meaning, a post-conviction habeas Petitioner is asking the Court to overrule what had already been full-blown proceedings. So, in *Calley*, for example, it was post-conviction from a military tribunal where the Petitioner had already had full-blown due process and a conviction on the merits.

Here, though, immigration confinement is really one of one in the sense that there is no judicial branch of government that can check the Executive's decision and the basis for continued confinement.

And, so we think that in this particular context, the Preliminary Injunction factors and the substantial claims and extraordinary circumstances wouldn't really make a practical difference to the disposition of this case or the weighing of the equities. And that's because, at its core, the *Calley* framework is really about is there some sort of irreparable harm over and above the ordinary incidents of

incarceration that make this Court acting fast -- or that make this Court's action necessary to prevent irreparable harm.

And, as I'll get to in a moment, we think we've presented those irreparable injuries and spades, and under either Rule 65 of the Rules of Civil Procedure or the *Calley* framework, that this Court has inherent authority to grant the Preliminary Injunction and order release.

THE COURT: All right. Is that the only relief you are requesting in the context of this Preliminary Injunction?

MR. FIFE: Yes, Your Honor. Actually, I should clarify. As part of that relief, we're also requesting that the Court require a Pre-Deprivation hearing and notice prior to any attempt to re-confine Ms. Kordia. And that is just to protect the Court's jurisdiction as well as protect Ms. Kordia's rights in the event that Respondents post-Preliminary Injunction sought to re-detain her.

THE COURT: And what is the extent of that order, in your mind; that she cannot be detained in any circumstance?

MR. FIFE: No, absolutely not, Your Honor. Our --

THE COURT: Just with respect to -- well, you tell me.

MR. FIFE: Of course.

So, the order that we -- and this is in the proposed order we submitted at Docket 13 -- but our vision -- or request, rather, is that if circumstances change and Respondents seek to re-confine Ms. Kordia, that they provide this Court and counsel, at a minimum, notice. And then, within 48 hours, or however, we're willing to move as quickly as possible, that the Court can then decide whether, okay, are these reasons in furtherance of the unconstitutional confinement, or do they have a bona fide legitimate reason/change in circumstances that justifies re-confining her?

And I'll just say that the other cases that we've identified at the top of our reply brief have issued a similar order as well. And the reason for that is that, as the Court is aware, our client has been retaliated against for her protected speech. And even in the bond proceedings, their basis for detention is that she attended a protest, and equating that with dangerousness. And, so we would like some sort of judicial review prior to her re-detention to --

THE COURT: Go ahead. Finish saying it out loud.

MR. FIFE: No. Well, I think that that is just incidental to this Court's jurisdiction in terms of, if Respondents have confined her for an unconstitutional reason, and then they want to re-confine her, then they should have

to show their work to make sure that they're not perpetuating that same unconstitutional basis for confinement.

And I will, of course, say that, if I can't convince Your Honor on the Pre-Deprivation hearing, then, of course, our client would request relief, and the Pre-Deprivation hearing we were just discussing is in no way necessary to granting the rest of the Preliminary Injunction, which is just simple release, which is exactly what habeas has historically for centuries been designed to do.

THE COURT: Okay. And, so you are seeking release under Rule 65 and under the *Calley* framework?

MR. FIFE: Yes, Your Honor.

And the other -- and I think if Your Honor has hesitations in terms of the Pre-Deprivation hearing, we would, of course -- we think that simple release can stand alone. It's not bound up with the notice and opportunity to be heard.

THE COURT: Okay. I may have questions, but I want both sides to go through their whole presentation, because you may answer my questions during the course of your presentation.

MR. FIFE: And, so if I could quickly just turn to the merits and the equities. I understand Your Honor has read the briefs, and, so I will do my best not to repeat myself.

THE COURT: So, let me -- I'm less worried about you repeating yourselves. I have infinite patience. You need to make your record. Both sides are aware that all I'm making is a recommendation. Judge Lindsay will review whatever is in the record. A lot of his determination will be de novo. So if it is not in the record, it's not before Judge Lindsay, who has the authority to enter any order on your motion. So, don't worry about boring me or repeating yourself. You should be more concerned with making sure it's in the record.

MR. FIFE: Of course, Your Honor. And we really appreciate what you called patience. Thank you.

So, turning to the merits, then. We think the most straightforward way to resolve this case on the merits is the First Amendment retaliation claim. Respondents in their response did not contest the operative legal framework or the volume of evidence that we've provided at Petitioner's Exhibit 1-A through 1-I demonstrating retaliatory animus towards those who advocate in support of Palestinian rights.

They also did not contest the declarations of the immigration practitioners we submitted demonstrating just how extraordinary Ms. Kordia's confinement is. Nor did they contest that the bond proceedings themselves reflected viewpoint discriminatory animus in violation of the First Amendment.

Thus, under the *Mt. healthy* framework that provides the operative and controlling First Amendment retaliation test, the burden shifted to the Government to demonstrate that, irrespective of the protected activity, they still would've taken the same -- they still would've taken the same action; meaning, confining her.

Now, they did not submit any evidence to meet that burden. Instead, they made one conclusory assertion: they had reason to believe she was removable.

But the Supreme Court, in a unanimous decision in 2024, rejected exactly that type of argument. And we make this point in our brief, but the point I really want to stress, is that in *National Rifle Association versus Vullo*, the Supreme Court considered retaliatory civil enforcement of New York insurance law. And there the record before the Supreme Court was that the New York insurance regulator was pursuing, quote, conceded illegality; meaning, there was no dispute that the NRA and the insurance providers were operating illegal insurance agreements.

And the Supreme Court unanimously said that even where you have, quote, conceded illegality, that the Government can't pursue civil enforcement in retaliation for speech and to suppress speech. We think that *Vullo* controls and forecloses their arguments.

Now, I understand that they do quote the *AADC*

case, *Reno versus American-Arab Anti-Discrimination Committee* -- I'll refer to it as *AADC* because it's a mouthful -- and we think that *AADC* is plainly distinguishable. It arose in a different context. It was a jurisdictional holding, not a constitutional one. And, more importantly, Ms. Kordia doesn't assert a selective enforcement defense to deportation.

The interest the Supreme Court identified in removing non-citizens from the country doesn't apply to confinement -- or to this habeas petition, because nothing in Ms. Kordia's habeas petition challenges the removal proceedings. No matter what this Court recommends, and Judge Lindsay ultimately decides, the removal proceedings will be ongoing and unaffected by these habeas proceedings. But, again, we think that, in the context of retaliatory confinement and civil enforcement, that *Vullo* provides the more appropriate framework for assessing our arguments.

The last thing I would say on *AADC* is that, even if there would otherwise be a lawful basis to confine Ms. Kordia, they have not contested Petitioner's Exhibits 3 through 6 and 10, which are the declarations of immigration practitioners with over a hundred years of collective experience representing thousands of non-citizens in bond and removal proceedings where the practitioners testified to the fact that this is extraordinarily rare.

Number one, for them to transfer Ms. Kordia in violation of their own policy that we attach at Petitioner's Exhibit 9.

Number two is to confine a visa overstay case for any meaningful amount of time.

And, number three is the invocation of the automatic stay, which, as Petitioner's Exhibit 6 identifies, it's a declaration from Jodi Goodwin, who the only examples in her over 20 years of experience that she has had DHS invoke the automatic stay were individuals accused of very, very serious criminal wrongdoing. But, of course, before the Court, Ms. Kordia has no criminal history, and DHS themselves, at Petitioner's Appendix 72 to 73, rated Ms. Kordia low risk across the board.

Now, the point of bringing up these diversions from policy isn't to have the Court question the wisdom or judgment of each one of those things, but rather under the First Amendment retaliation framework, the unusualness of their enforcement actions against Ms. Kordia and the rareness with which they exercise all of these options is significant evidence in support of the retaliatory animus that Respondents have towards Ms. Kordia and others who protest and support Palestinian rights.

Now, the -- and if the Court has no questions on the First Amendment claim, I'll move to substantive due

process, which we think that that claim is likely to succeed on the merits under *Zadvydas*.

As we identify in our brief, *Zadvydas* says that, in the context of civil immigration confinement, that the Government cannot use that civil confinement as punishment; it has to serve an adequate regulatory purpose. And here, Respondents have made no attempt to explain the basis for the detention and what adequate regulatory purpose confinement serves.

Under *Zadvydas*, using confinement as punishment for protected activity is a straightforward violation of the substantive Due Process Clause of the Fifth Amendment, and Ms. Kordia is likely to succeed on that claim.

In terms of the other argument that Respondents raise in response to the substantive due process and First Amendment claims is exhaustion; meaning, that Ms. Kordia has to go through the complete administrative process in order to have this Court adjudicate her claims. That is straightforwardly wrong. We identify in our briefs that, number one, Ms. Kordia can't bring these claims in that administrative process. And the Fifth Circuit, in a variety of contexts, has held that where the administrative agency has no authority or jurisdiction to hear the claim, then you don't have to exhaust, because there's nothing to exhaust; the agency can't remedy the constitutional violation.

And the only other point I'd make today that we didn't raise in our briefs is we cite the *McCarthy versus Madigan* case, which is a Supreme Court case on exhaustion from 1992. There, the Supreme Court identified three circumstances in which exhaustion is not necessary:

Number one, if the Plaintiff or Petitioner will suffer irreparable harm waiting to exhaust. Number two, whether the agency can grant effective relief. And, number three, whether the agency has predetermined the issue before it.

All three of these weigh in favor of rejecting Respondents' exhaustion argument.

As we have explained in our brief, each day Ms. Kordia is confined, she faces irreparable harm.

Number two, again, what I just said, the agency has no power to address these constitutional issues.

And, lastly, number three, the agency doesn't even -- her confinement is predetermined in the sense that it's DHS's unilateral authority, under the automatic stay provision, to keep her confined. And there is no process by which she could challenge her current confinement.

And, so we think that, for the reasons we stated in our brief and the lessons and principles in *McCarthy versus Madigan*, that imposing an exhaustion requirement is clearly inappropriate here, and the Court should reject their

argument.

The last merits claim I'd like to address is our procedural due process claim. And, first, I'd -- which -- and Ms. Kordia's likely to succeed on the merits of that claim because the invocation of the automatic stay offers literally no procedures by which Ms. Kordia can contest her confinement during the automatic stay period. Respondents have identified other procedural safeguards within immigration bond proceedings, but they have not contested at all the fact that there are no procedures during the automatic stay provision.

And consider how the automatic stay provision works in practice. So, when a non-citizen is initially arrested by DHS, they'll make a custody determination, at which point Ms. Kordia and other non-citizens have a right to seek a custody redetermination hearing.

Ms. Kordia exercised that right, and an immigration judge promptly held that hearing. She requested the redetermination on March 27th and was before the immigration judge on April 3rd at the bond hearing. And there, both DHS and Ms. Kordia can present evidence, call witnesses, cross-examine witnesses, and make arguments to the Court, at which point the Court makes an individualized determination.

But what the automatic stay does is it perverts

that process by allowing the same person that was trying to confine Ms. Kordia at the immigration hearing to file a single slip of paper and prevent the immigration judge's order from going into effect. And then all they have to do after that is file a Notice of Appeal.

And that's what DHS did here. They had to make no showing on the merits. There's no judge that considers the propriety of an automatic stay. And what's more is that DHS also has the unilateral authority to continue to extend that automatic stay provision. So, even if a couple weeks from now the BIA affirms the immigration judge's order, they can extend that automatic stay provision even further by referring the case to the Attorney General, who would make the ultimate determination.

Two court -- two different district judges in Minnesota, within the last month, have considered the exact arguments I'm making here today and have found that in the particular case -- in the cases before them, that the automatic stay provision, to quote Mohammed H., "operates by fiat." It allows the prosecutor to make the detention decision, therefore undermining the custody redetermination process.

Under *Mathews v. Eldridge*, this process is unconstitutional. Number one, Ms. Kordia has, as the Court recognized in *Zadvydas*, a substantial private interest in

remaining free from detention and back with her family. Number two, not even the Government contests that the automatic stay provision has a high risk of erroneous deprivation because there is no neutral arbiter who decides on the proprietary of this stay, and there is no check other than the prosecutor's own judgment. Lastly, they have conceded that the burden on the Government in just seeking a discretionary stay would be low.

I'd point the Court to Petitioner's Exhibit 10, which is the declaration of Kerry Doyle. She was a formal Principal Legal Advisor for I.C.E., and attested to the fact that it's not that burdensome for DHS to just seek a discretionary stay where at least Ms. Kordia and others like her would have the opportunity to be heard at the BIA, and the BIA can decide those stays very quickly in an expedited fashion. And, so invalidating the automatic stay in this case would impose no substantial burden on DHS.

Lastly, I'd like to turn to the equities. On the equities and extraordinary circumstances, the touchstone for this Court is whether there is irreparable injury that will occur in the interim between now and a final judgment on the merits.

We have identified three irreparable injuries that, together, both warrant a preliminary injunction and constitute extraordinary circumstances under *Calley:*

Number one, as the Government has -- as Respondents have utilized the immigration process to suppress speech with which they disagree, this has caused a chilling effect not only on Ms. Kordia, who is literally confined for her speech, but has also sent a message across the country to millions of people who take to the streets each year, that this Administration can and will use any tool at their disposal to suppress disfavored speech.

Now, it is uncontested that in the Fifth Circuit a First Amendment injury like this not only constitutes irreparable harm, but safeguarding the First Amendment rights of Ms. Kordia and countless others also serves the public interest.

Second, is the religious liberty violations we have identified. Again, as Ms. Kordia has for the last two and a half months, she will be continued to be deprived Halal food, and she will continue to sleep on the floor surrounded by bugs and other insects, while she feels so dirty that she feels unworthy of God and unable to pray.

The Fifth Circuit in the *Navy SEALs 1-26* case recognize that even where the Government asserts a more substantial interest than Respondents have asserted here, that rectifying violations of religious liberty prevents irreparable harm and is in the public interest. The same is true here, and a court decision preventing that harm both

prevents Ms. Kordia's irreparable harm and is in the public interest.

Lastly, on the equities, is Ms. Kordia's health. As the Court is aware, because of the lack of Halal food and the dirty conditions, she feels dizzy, has constant headaches, colds, sore throats, and at one point even fainted in the shower. As both *Calley* and the ordinary preliminary injunction tests identify, those are irreparable injuries that require immediate relief from this Court.

On the other side of the ledger, the Government asserts two interests: number one, they have an interest in immigration enforcement, and, number two, they have an interest in confining non-citizens who are removable.

The most important point to both of these interests is, as I said before, no matter what this Court decides, and no matter what Judge Lindsay ultimately decides, her removal proceedings will remain ongoing. We are, of course, confident in our defenses in that removal proceedings, but none of that is before the Court. And, so an injunction would not affect those interests because they could continue immigration the same removal proceedings against Ms. Kordia that they have been going on since March 13th.

Further, it's black letter law that an agency has no lawful interest in violating the law. And, so, if this

Court finds that Ms. Kordia is likely to succeed on the merits, then the Government has no interest in perpetuating unlawful confinement, and it's in the public interest for a court to remedy that unlawful agency action.

Over the last month, six different courts in three different circuits have seen a similar factual record and similar arguments in the equities, and they have all released the Petitioner on bail, because they recognize that when the Government confines someone, they cannot use their considerable power to suppress a disfavored viewpoint. That is exactly what Respondents are doing here by keeping Ms. Kordia confined 1,500 miles from home, in violation of their own process.

And, to be frank, Your Honor, Respondents in particular, DHS, have told us why Ms. Kordia's confined and why they arrested her, which is that she attended a protest in support of Palestinian rights on April 30th, 2024. The Government apparently disagrees with the viewpoint she expressed, but, nonetheless, she has the First Amendment right to say it.

This Court should affirm Ms. Kordia's First and Fifth Amendment rights and recommend granting the Motion for Preliminary Injunction.

Thank you.

MR. STOLTZ: May it please the Court.

I think, conceptually, it's helpful to think of the claims in this case as fallen into sort of two groups. And that's how I'm going to present our argument today.

The first such group relates to claims to the extent they're challenging the fact that the Petitioner is currently defined. So there is a challenge to the decision that has been made thus far. We don't have a final administrative decision, but there is a challenge to the decision that's been made thus far to detain her. And whether that's considered a First Amendment issue or substantive due process, it's basically the same genre of claim that she's being detained and they're challenging that decision. So that's sort of the first thing.

The second thing is a procedural issue, a procedural due process issue relating to the automatic stay provision in the immigration proceedings. That's the provision that allows DHS to appeal the immigration judge's decision and to keep Ms. Kordia in detention for a 90-day period pending further review. So that's sort of the second thing, procedural due process.

And I'm going to explain why, in the Government's view, both sets of claims fail for slightly different reasons, and she's not entitled to a preliminary injunction on either.

So, first, relating to the decision to detain

her. The Supreme Court has made clear, for example in the *Demore* case, that detention during removal proceedings is a constitutionally valid part of the process. That's what the Supreme Court has said. Detention during removal proceedings is a constitutionally valid part of the process. So that's sort of the backdrop.

And then there are several statutory provisions that I'm going to go through that, in fine detail, talk about this detention issue.

The first of those is 8 U.S.C. 1226(a). That's the statute that authorizes the Attorney General to arrest and detain an alien -- and that's what the statute says, "an alien" -- pending a decision on whether to remove them. And that statute says that the alien of the Attorney General may continue to detain the person or may release the person on bond or parole.

Now, in that same subsection, Subsection(e) of that same statute, in 1226, there's a provision that says the Attorney General's discretionary judgment shall not be subject to review in this regard. No court may set aside any action or decision regarding the detention of any alien or the revocation or denial of bond or parole.

So that Section 1226(e) is very clear that judicial review is not available for decisions to deny bond, to deny parole.

And, finally, 8 U.S.C. 1252(a)(2)(B) is a provision that was later added, I think, in the 2005 era that makes clear that there is no judicial review of any discretionary decision that's made by the Attorney General under this group of statutes. And that statute at 1252(a)(2)(B) specifically references and displaces habeas jurisdiction. So that satisfies the sort of clear statement rule that the courts require in order to displace habeas jurisdiction.

So, 1226 and 1252(a) working together, basically, insulate the Attorney General's discretionary decision on a bond or a detention issue from review.

And I also want to point out, too, that Congress knows how to change that. Very recently in a law that was passed earlier this year, called the Laken Riley Act, Congress actually modified 1226 to permit judicial review of decisions by the Attorney General to release an alien. So there's actually a new provision in 1226(e) and (f). They changed the language of (e), and they added the provision in (f) that actually permits judicial review of the discretionary decision to release an alien.

You know, crucially, though, they did not create judicial review for the opposite of that, which is a decision to detain. So I think that's very telling.

Now, how do these provisions work in practice?

Well, in the Fifth Circuit's *Loa-Herrera* case -- which has been discussed by Petitioner, and that we cite -- the Fifth Circuit was very clear that this provision in 1226(a) relates to the Attorney General's discretionary judgment regarding the application of parole, and parole and bond are the two options in the statutes other than detention. And the Fifth Circuit said, including the manner in which that discretionary judgment is exercised. And that is not subject to judicial review.

So, for example, in the *Loa-Herrera* case, the Fifth Circuit was already explicit that they were not going to reach the merits of the Plaintiff's constitutional claims because they just couldn't do it. And the Fifth Circuit went on to say, essentially, to be sure, the Executive Branch has a duty and an obligation to adhere to the Constitution, but that does not change the fact that there's no judicial review available. The Fifth Circuit specifically recognized that.

Now, *Loa-Herrera* was not itself a habeas case, but it speaks to the fact that the Fifth Circuit is very clear that this decision about whether to grant release or not is a discretionary judgment. It's a discretionary decision. And under 1252(a)(2)(B), that discretionary decision is insulated from judicial review including on habeas.

That's true in the decision from Judge Stickney

and Judge Kinkeade's decision, the Maramba decision, which counsel cited. There was no jurisdiction to review a denial of release on bond in that case. And it's true that there was some kind of alternative discussion in that case of whether the Petitioner had a constitutional claim that indefinite detention, you know, to the extent the statute allows indefinite detention, perhaps that was constitutionally suspect.

That gets into, essentially, what's a framework challenge; it's a challenge to the overall framework of the system rather than an individualized determination. And, so, that's different. And I'll talk a little bit more about framework challenges when we talk about the procedural due process issue.

But the fact that a framework challenge may be permissible does not mean that what they are asking for here in terms of the decision to detain the Petitioner -- which is an individualized bond determination; essentially, it's an individualized custody determination for one specific Petitioner. Nothing in the cases that allow so-called framework challenges authorizes judicial review of that individualized decision.

And I think a little of the discussion that, you know, counsel had when counsel was up here, kind of shows that what they're really asking for is, essentially, a bond

determination by this Court on these specific facts, and including, you know, possibly, you know, whether the person should be re-detained at a later date. But this Court is not an immigration court. This Court is not the Board of Immigration Appeals. That's not this Court's job. And the statutory framework is very clear on that.

So, for all those reasons, we think that there is just simply no jurisdiction to review the decision to detain Ms. Kordia. And that decision is -- it's the Attorney General's decision -- the Attorney General and now the Secretary of Homeland Security under the split into DHS -- but it's, ultimately, the Attorney General's decision.

The Attorney General has, essentially, delegated people to make that decision at different points in the process. You know, we have DHS that makes an initial decision. We have the immigration judge. We have the Board of Immigration Appeals, which is more or less the final decisionmaker, unless, personally, the Attorney General intervenes. Those decisions -- any one of those decisions at the time it's made is considered the decision of the Attorney General, and it's a discretionary decision, and it's, therefore, not subject to judicial review.

So, again, that's all the sort of jurisdictional issue. I think it's fairly straightforward.

I will say this, too -- to the extent this kind

of gets into the merits, but it also informs on why there is no jurisdiction -- is if you were to believe there was jurisdiction, then that opens up a whole host of problems, practically speaking.

For example, whose decision is being reviewed right now, right? We have -- there is no final decision; it's pending with the Board of Immigration Appeals. Do we review the DHS decision? Do we review the immigration judge's decision? The immigration judge, obviously, found that this person could be released, right? So how does that play into this notion that there is some improper government retaliation going on if one of the decisionmakers has said, no, this person can be released.

There is sort of this internal dispute, which, I think, goes to show, one, that it's not the place for this Court to intervene in that due to there not being jurisdiction. But, two, it also sort of rebuts this notion that there is a -- you know, that the fix is in.

I think it's also important to realize that all the cases that they cite, particularly on their reply brief at the opening page -- and there's been a flurry of cases -- all those cases are from other circuits. None of them have the very -- as far as I know -- have the very clear case law of the Fifth Circuit from *Loa-Herrera* talking about how this is a discretionary judgment.

Additionally, in each one of those cases, the facts are just not the same. In this case, it is uncontested, you know, the grounds for the removal proceeding of the Petitioner and therefore her detention -- because we know that detention is a constitutionally valid part of removal proceedings -- the grounds for her removal proceedings are uncontested and are totally unrelated to anything the Government has done, or did, or is alleged to have done.

She had a student visa. She left school. That caused her student visa to, essentially, lapse. My understanding of how that works is the colleges report, essentially, to some database; these people are still enrolled, these people are no longer enrolled, and therefore there is a, you know, you can essentially find who are the people who had student visas that are no longer, you know, they're no longer enrolled and therefore are out of lawful status. She does not contest that she lost her lawful status several years ago in 2022, and it had nothing to do with anything that the Government has done.

In contrast, all the cases that are cited in the reply brief -- in the opening page of the reply brief -- those are all cases where it's alleged that -- well, the person had lawful status, essentially, up until very recently, and it's alleged that, you know, within the last

month or two months, or however long, the Government sort of simultaneously terminated, took away that lawful status by, for example, revoking a student visa for allegedly invalid reasons or terminating, you know, a protected status for allegedly invalid reasons. Some of those cases involve determinations by the Secretary of State that the person's presence in America would harm American foreign policy interests. And, so that's a specific statute that allows that.

Anyway, all of those cases have to do with situations where a person was in lawful status as of 2025, and the Government is alleged to have gone in and done something to terminate that status for an improper reason and then place the person in removal proceedings and detain them.

So, that is not what we have here. This case is not here. And I understand why counsel wants to sort of lump the Petitioner into that group because those people have obtained relief from other districts. And I think some of those cases are on appeal, and it's not yet clear how that's all going to shake out. But even if those decisions stick, it's not the same as this Petitioner, because we don't have this scenario of lawful status and allegedly improper termination, and then now you're in removal proceedings. That's just not what we have here.

Let me say this, too, and this will also kind of

bleed into the second group of claims dealing with the sort of procedural issue. So, counsel relies on a number of these Supreme Court cases to say that they allow for jurisdiction over constitutional claims. That's not -- that's too broad. That's not what those cases stand for.

The *Demore* case, for example, is a very good example. In that case, the aliens were challenging, essentially, the statutory framework that allowed them to be subject to mandatory detention. And the Supreme Court was very careful to refer to this notion that it was a framework challenge. So you're not challenging your specific circumstances how it's applied to you; your challenge is the existence of, essentially, this statute that allows you to be detained, that allows this or that.

And, so that sort of framework challenge is permissible according to the Supreme Court. The Supreme Court also, though, said it nonetheless fails on the merits because detention during deportation proceedings is constitutionally valid.

The same is true of the *Zadvydas* case -- I think that's how you say it *Zadvydas* -- in *Zadvydas*, the situation was aliens who already had an order of removal, and they were in detention pending execution of that removal; so, pending the arrangements to actually get them back to their home country. The statute says that they can be detained, and

they are detained for an initial 90-day period, and then they may be detained longer, you know, as necessary to actually effectuate the removal.

So the challenge in *Zadvydas* was whether, you know, the statute basically authorized an indefinite detention past the 90 days, and then just on till infinity, for an alien who there was no reasonable prospect of actually being able to remove them to the country for logistical reasons; you know, the country isn't accepting aliens.

So that was very much a framework challenge. It was the notion of does this statute allow the indefinite detention of, essentially, any alien when you're not able to remove them. And the Supreme Court said, no, the statute implicitly contains a sort of presumptive period of six months of detention, and after that there's sort of presumption that you shouldn't be detained anymore unless there is some prospect.

Again, though, that is not the same thing as what we have here where we're talking about a very discretionary decision on the front end at the beginning of a removal proceeding for a specific person to detain them. It's just not the same.

The *Jennings* case is another case that was cited. And *Jennings* was also a framework challenge. These were a group of aliens that were basically -- had argued and had

convinced some courts in the Ninth Circuit to hold -- that while they were detained pending their removal proceedings -- that new bond hearings were required in front of the immigration judge every six months. And, so the Ninth Circuit has, essentially, grafted onto the statute a new procedural requirement and said, yeah, the statute allows these people to be detained, but we're going to also say they need new bond hearings every six months.

The Supreme Court reviewed that issue -- it's very much a framework issue of the overall process -- and the Supreme Court said, essentially, no, those hearings aren't required. But I think it's telling, though, is even when the Ninth Circuit said you have to have these hearings, it was a hearing that was going to be in immigration court; it was not a federal Article III court that was going to review that issue.

So these are all framework challenges. What we have here is not -- it's very much not a framework challenge. It's not a framework challenge because they are relying specifically on circumstances related to this particular Petitioner and the specific decision to detain her.

They're not saying that the statute, insofar as the statute allows for detention; that's unconstitutional. They couldn't make that argument because the Supreme Court had already said that detention during removal proceedings is

a constitutionally valid part of the process.

The last Supreme Court case I want to mention right now is the *Reno versus Arab-American Anti-Discrimination Committee*, referred to by counsel as *AADC*. *Reno*, of course, would be Janet Reno, attorney general during the Clinton Administration. And I think that's interesting because it kind of goes to show that these arguments are not necessarily new, although there is, you know, there's always certain new facts and circumstances.

But in the *AADC* case, the argument was very similar here. It was an argument that a group of people had been targeted for deportation proceedings because of their support for Palestinian causes. So that was exactly the argument. It was, essentially, an issue of selective prosecution, you know, you're looking to get me specifically because I've supported Palestinians.

The Supreme Court was very clear that -- and again, this case was also long before many of the further -- the later statutory changes that have restricted review. But the Supreme Court was very clear that this notion that, you know, what they referred to as an ongoing violation of a person being unlawfully present in the country must be allowed to continue because it has somehow been improperly selected. And the Supreme Court said that was not a powerfully appealing proposition.

And the Supreme Court also discussed all the sort of practical reasons that I think are also inherent in this case as to why this is just not the sort of thing that the Courts weighed into. Because the Supreme Court talks about, well, whose decision is it, who are we going to look to. I mean, here, is it the initial I.C.E. officer, is it the immigration judge, is it the ultimate Board of Immigration Appeals panel?

There's all these practical problems. And then there's also the problems of sort of probing, you know, allegedly subjective beliefs of individual decisionmakers. And, just, that's not the type of thing that the federal court is built for, and that's not how this system is set up.

Sort of a couple last issues in terms of the what I call the substantive claims or the claims challenging the decision to detain, is there has not been an exhaustion of administrative remedies. And that is something that, for example, in the Judge Stickney/Judge Kinkeade decision that they specifically talked about administrative remedies. That's normally required. And here we have an ongoing administrative process that will determine what the Attorney General's final decision is about this detention.

And it's not unusual that -- you know, I think they try to make it sound like the Writ of Habeas Corpus has been suspended, and that's just not the case. There is

judicial review available after the removal proceeding has concluded. In the meantime, though, she's subject to the proceeding and to detention.

And that's really no different than, for example, a habeas review of state court convictions. A person can be charged in state court allegedly for improper reasons, allegedly without any evidence. You know, they may be convicted, they may have an appeal pending. During this time, if they try to come into federal court and say you need to hear my federal writ now, they're not going to be allowed because they have to exhaust administrative remedies. That's not a suspension of the Writ of Habeas Corpus; it's just a recognition that the system needs to play out.

And as far as what counsel mentioned about immigration practitioners and their experience, you know, over many, many years, I don't think any of that's really relevant. It's no secret that the Government right now is very focused on immigration enforcement. And, so there's nothing unusual about the fact that there are people who, perhaps in the past, were not, you know, in immigration proceedings that now are in those proceedings. But that's just a function of the leadership of the Government right now and what decisions they've made, and that's all within their sort of executive power to decide those priorities that they want to do.

So I think that is our argument -- those are our arguments on the bucket of claims that challenge the actual decision to not release her at this time.

Now, there's a second issue which is the sort of procedural due process issue that has to do with this automatic stay provision. The automatic stay refers to if the immigration judge decides to grant a release, the automatic stay gives DHS the right to appeal to the Board of Immigration Appeals, and during that appeal -- for a limited period during that appeal -- to, essentially, stay the person's release pending the Board of Immigration Appeals is a review. This is in 8 CFR 1003.19. And there's also 8 CFR 1003.6.

One thing that's interesting -- and this is not in our brief, but I think it's sort of the legislative history, if you will, or the regulatory history of this particular regulation. This automatic stay provision, if you actually go back and look, it's existed in one form or another for many, many years.

Originally, it did not contain a time duration. So, if DHS -- or back then INS, or whoever it was -- invoked the automatic stay, the immigration judge's decision was put on hold, and it basically remained on hold for however long.

There were some courts in the early 2000s that took issue with that, again, which is very much a framework

issue, you know, the framework that allows this, does that satisfy due process. That's different than, you know, a discretionary decision that's being challenged. Some courts took issue with that, though, and they said this automatic stay provision is not consistent with due process insofar as it allows basically anybody at DHS or INS to just right now to slip a paper and therefore overrule the immigration judge's decision indefinitely, right?

So, in 2006, the regulation was actually amended to take into account these concerns. And in 2006, that's when the regulation was added. They incorporated this 90-day time limit in there. So it's no longer an indefinite duration. It is a 90-day discrete limited amount of time. And the regulation also added the requirement that this could not be simply done at the whim of any detention officer or any I.C.E. agent or officer. It actually requires a high-level supervisory review. The supervisory DHS has to certify specifically -- and that's in the record here -- that they have reviewed this case, and they are, you know, opting for the automatic stay.

So, the regulation was amended to take, you know, to basically take account of these due process issues, and it was done so in a way that addressed the concerns that the Courts had raised.

And I think, also, if you look at those early

decisions where the courts were looking at the prior version of the administrative stay, the relief that they actually granted was very limited in scope. So, the relief was not, okay, you now are entitled to be released, essentially, forever until your proceeding's over. The relief instead was that the courts imposed some sort of durational limit on the length of the stay, and they basically said, okay, this automatic stay can only continue for 30 more days. And during that time, DHS needs to either, you know, seek a discretionary stay from the BIA or, you know, at that point the automatic stay will basically expire.

That limited scope of relief, though, is now what is essentially in the regulation itself. So the regulation already provides that result by saying at the conclusion of this 90-day period -- and I think we're already approximately halfway through that period -- the stay expires.

So, to the extent that even if this Court were convinced that the automatic stay in its current form violates due process -- which I don't think it does -- it very expressly allows for plenty of process; there's the BIA gets to decide it. And it's a time-limited duration. The relief would, essentially, be the relief that the regulation already provides.

I think the other thing on the automatic stay is that, you know, counsel suggested that there is no process,

there's no decisionmaker. And that's just not true. There is a decisionmaker. The Board of Immigration Appeals is going to look at this. And if they don't do it quickly enough, the automatic stay will expire.

It's really no different than when DHS makes an initial custody determination in the case. There is a period of time where the person is in custody pursuant to that determination before the immigration judge looks at it. Well, now we're also there's been another custody determination, and there's still another period of time before the next decisionmaker looks at it. The statute, or the regulation, was amended to make sure that that decision, you know, occurred relatively quickly within 90 days. And, so that is, essentially, what the Due Process Clause requires.

You can imagine a world where the immigration judge made the decision, and if DHS wanted to appeal, there was a panel of the BIA that was sitting next door, and you could immediately go next door, and within two hours you could have a decision from the BIA. I think nobody could argue that that was somehow violative of due process, that the person was kept in custody for an additional two hours while the BIA ruled.

Okay. So, it's not two hours; it's 90 days. And the question is: does that violate due process? And I think

the case, as we've cited, explained why it does not. Because much longer periods of detention, you know, during removal proceedings, 12 months, you know, more than a year, have been held to be reasonable and to not violate due process. So the relatively limited 90 days here does not.

But I think that the old cases on the prior version of the automatic stay that found that that version without a time limit was improper, and then those cases usually then impose some kind of time limit going forward that say, okay, it's going to expire now in 30 days. And, of course, the case is already pending, so I think the person there was probably held in detention for longer than 90 days, anyway, while the case worked its way through.

So I think there's just no -- there's no showing that the automatic stay framework, if you will, somehow violates due process. It doesn't. And I think also looking at the automatic stay framework in that sense really sharpens the distinction between the claims that challenge that framework and her other claims. Because the other claims are unlike the framework challenge. Those claims challenge a very discrete decision that's discretionary, and, essentially, asks this Court to look into the minds of unknown decisionmakers including some people who haven't even issued a decision yet. So, the automatic stay framework is just a different kind of challenge.

And I would also say, too, to the extent that the Petitioner is claiming that DHS somehow acted improperly in invoking the automatic stay, that's the sort of claim -- you can see the distinction there, I think -- that's not a framework claim; that's a claim to a discretionary decision.

DHS, including that high-level supervisor who the regulation requires to consider this, DHS had to sit down, look at the facts of the case, and decide are we going to invoke the automatic stay or not. And they made a decision to invoke it. So that decision to invoke the automatic stay -- just like the initial decision to the initial custody determination to not grant bond -- that decision is protected because that is a -- it's protected from judicial review -- that is a decision that is, you know, a discretionary decision of one of the Attorney General's delegated decisionmakers.

I'm happy to answer any questions that the Court has. But, otherwise, we would ask, for all these reasons, that the Motion be denied.

THE COURT: Okay. So let me make sure I am not misunderstanding you. You do not dispute that the procedural due process claim is a framework challenge over which the Court would have jurisdiction?

MR. STOLTZ: I think that's right. Correct. We've said that framework challenges are okay, with the

caveat that the decision to invoke the stay is not a framework challenge. But, just, does this regulation comply; that's a framework issue. Yes, Your Honor.

THE COURT: Okay. And then with respect to the First Amendment and the substantive due process claims. You dispute the characterization of those claims as challenging the constitutionality of the detention.

MR. STOLTZ: I guess I wouldn't -- she's mentioned the First Amendment; that's part of the Constitution. So I'm not disputing that she's cast those claims with a constitutional tenor. I guess what I'm saying is not every claim that has a constitutional tenor or label associated with it is a constitutional framework claim that is subject to review.

So there's -- and I think that's clear in the *Loa-Herrera* case where that was -- there's some constitutional claims that are not subject to review; they're not a framework claim.

Does that make sense or answer your question?

THE COURT: It's getting closer, but it's not quite there yet.

MR. STOLTZ: Okay. I guess we don't --

THE COURT: So, Petitioner has represented that she is not seeking review of the decision -- not seeking judicial review of the discretionary decision to detain her.

Instead, she has brought a habeas claim alleging that her confinement was in retaliation of the First Amendment, and is seeking release because her confinement violates the Constitution.

MR. STOLTZ: I guess my response to that is that is nothing more than a challenge to the decision to detain her. If you're saying that I'm being detained for retaliatory reason, you're saying, literally, that there's some decisionmaker who looked at something that I've done or in my views and decided on that basis to detain me. That is a discretionary decision to detain the person. And, regardless of whether she says it violates the First Amendment or violates anything else, it still is that sort of discretionary decision that is not subject to judicial review.

THE COURT: And is that because it is an individualized decision with respect to the Petitioner; it doesn't relate to anyone who might be subject to the framework of the statute in regulation?

MR. STOLTZ: So I think it's -- I mean, it is not a challenge to the framework of any statute or regulation. So, in that sense, it's not a framework statute.

Now, I understand she's saying that the Government has done this to me and also to a score of other people. I'm not saying that it -- I understand that there's

other people who are maybe bringing similar claims. But I don't think that removes it from an individualized discretionary decision. Because each of these people is going to have different facts and circumstances.

So, if what Your Honor is asking is: does the fact that she claim that this is part of some overall policy to disfavor a particular viewpoint or group? That does not remove it from the fact that it still is, with respect to her, a discretionary decision that's not subject to removal.

THE COURT: Pursuant to those -- 1226(a) and (e) and 1252(a)?

MR. STOLTZ: Yes, Your Honor.

THE COURT: All right.

Now, I appreciate that the Government -- that the Respondents are not yet required to respond. But in terms of filing a response to the Petition, that deadline hasn't expired yet. But there was a lot of argument from the Petitioner about things that the Government does not dispute, facts that the Government does not dispute. Does the Government want to dispute any of the facts that the Petitioner has identified as undisputed?

MR. STOLTZ: Right. I mean, I would say we don't -- I disagree with the notion that we have conceded or, you know, agreed to their characterization of the facts. Part of this issue is that this is not a bond hearing; this

is not an evidentiary hearing about the subjective intent of any decisionmaker. So none of that is really before this Court. But I will say on the, sort of, that merits thing, no, we don't agree.

For example, if you look at Page 40 of the Appendix that the Petitioner filed, that's a press release that does mention this particular Petitioner. That press release, though, talks about needing to correct the record about people who have been placed in removal proceedings. And, with respect to this particular Petitioner, it actually says, yeah, she was at this protest where she was arrested, but it says but actually that has nothing to do with her removal; it's because she's a student visa overstay.

So the Government has pointed that out, even in that press release, where it was talking about all its efforts in regard to immigration enforcement, that her case was actually just a visa overstay case.

I would also say that some of the allegations about what's going on at the facility itself in terms of religious accommodations, you know, bed issues, those issues, as we said in our response to the Motion, are conditions of confinement issues, and so they're not really part of the habeas inquiry at all. And there's Fifth Circuit case on that that we cite. In fact, I've had cases before where people have lumped together conditions of confinement habeas

claims, and the Court will usually sever them. So there's a separate civil rights action that involves conditions of confinement because it just has no part in habeas.

I don't have -- we are not here to put on evidence about the conditions of the floor. I didn't hear counsel say that she actually does not have a bed; it sounded like it was more of a decision to sleep on the floor. I don't know anything about that. But we certainly -- we're not conceding her account of events, but we're also, more importantly, I think, legally those do not relate to the matter that's before the Court right now.

THE COURT: So, with respect to those allegations concerning her conditions of confinement, the Petitioner represented at the outset of the hearing that her Preliminary Injunction relates only to her habeas claims. So, the condition of confinement claim is not at issue, but they want to use her -- verify the allegations in her Verified Petition as evidence of the extraordinary circumstances that might justify relief on one of these other habeas claims.

MR. STOLTZ: I understand that, Your Honor. I think that my view on that is what we essentially said in our response is that the Fifth Circuit is very clear that conditions of confinement is separate than habeas. This came up during the COVID pandemic where there were a lot of claims for detainees saying you have to essentially release me from

detention because the conditions in here are so dangerous, and with respect to COVID -- and the Fifth Circuit was very clear -- that that is just not a ground for habeas.

So our view is that, essentially, you can't sort of backdoor those same arguments into habeas through the remaining prongs of a P.I. Motion, because it's just not part of the thing. So that's our point on that.

THE COURT: All right. And you mentioned that in a lot of cases in the Fifth Circuit where there are actions that bring both habeas claims and conditions of confinement claims, the Court severs those. In my experience, most of those cases are brought by pro se litigants, and the Court does that to assist them.

Should the Court sua sponte do that in this case?

MR. STOLTZ: I'd defer to the Court. I recall a case, I believe with Judge Lynn, where there was an immigration detainee who was represented by counsel who claimed that she had a brain aneurism, or something, that required her release because she wasn't being treated properly. And I think -- don't quote me on this -- but I think that Judge Lynn -- and if I'm remembering correctly if it was Judge Lynn -- I think severed those cases.

So, I'm not saying that it's a pro se -- I think it happens regardless of pro se or not. I mean, it is --

yeah, I'd defer to the Court on that.

THE COURT: I was trying to figure out if the Government was requesting that the Court at least sever those at this time.

MR. STOLTZ: I guess I have not made that request at this time. I think that's something we would do once we're sort of formally at the point where we need to respond to the Petition. And, at that point, I would probably research and refresh my recollection.

The reason I mention this is just for the point that these are two different sets of claims, regardless if they are consolidated into a single action or not, frankly. But they're different claims, they're different types of relief. The remedy for a condition of confinement claim is not release; it is, you know, essentially, an Injunction to direct the person to correct the thing.

THE COURT: Right. Which the Petitioner has not asked for --

MR. STOLTZ: Correct.

THE COURT: -- at this stage.

MR. STOLTZ: Correct.

THE COURT: With respect to the Affidavits from the immigration attorneys that are included in the Appendix, Petitioner has represented that the Government doesn't dispute any of that evidence or contradict any of that

evidence; is that correct?

MR. STOLTZ: We have not filed countervailing Affidavits from other immigration practitioners. So, I guess we haven't done that. There's not a battle of the experts, or anything like that.

I think my response to that is, one, that it's not unexpected that conditions now in the current era of immigration enforcement are different than they may have been historically. That was, frankly, a big part of the current administration's goals was to say, no, we need to enforce these things more rigorously.

I don't necessarily agree -- you know, there are cases in the past, there's decisions that you can look up where people were, for example, challenging the automatic stay provision, including the prior version of the automatic stay where it was an indefinite detention. So, to that extent, I think the sort of legal record, or the case law, shows that this is not a new thing.

Now, whether it's accelerated in intensity, my guess is a lot of immigration practitioners will say that their practice is very different right now than it was six months ago. And I don't necessarily dispute that; I don't have grounds to dispute that. But I also think it's sort of irrelevant. It doesn't prove anything in the Petitioner's favor. That's just a question of, you know -- a huge swath

of the immigration laws are discretionary, because, they're essentially, it's a law enforcement prosecutorial-type issue where the Executive decides how they're going to focus their resources on doing it. And during a time when the Executive has made clear that it's going to put its resources to enforcing those laws, I'm not surprised that immigration practitioners see things differently on the ground. But I also don't think that proves anything in the Petitioner's favor, to be clear.

THE COURT: All right. Is there anything else you want to put on the record before I give Petitioner an opportunity to make a brief reply?

MR. STOLTZ: No, Your Honor. Thank you for your time.

THE COURT: Thank you.

MR. FIFE: Thank you, Your Honor.

Once again, I'll be addressing the jurisdictional arguments of Respondents responding to their merits arguments, and then concluding with the equities and extraordinary circumstances.

On jurisdiction, the INA could not be more clear that the immigration process in the petition for review to the Fifth Circuit at the end of the immigration proceedings is no adequate alternative for habeas jurisdiction. A, because the Fifth Circuit lacks meaningful power over that

bond decision at the end after a final petition for review. And, B, that the Fifth Circuit, even if they had jurisdiction, couldn't review any of the facts.

I heard Respondents' counsel say, oh, well, this just needs to be at the end of the case after the final order of removal as the INA requires. But that flips habeas exactly backwards, which is that habeas is designed to test the constitutionality of executive detention.

In *Boumediene*, the Supreme Court recognized that habeas has a particular force and extra-valuable role where you're challenging not post-conviction detention after an order from a judge, but when it's unilateral executive detention. And that's exactly what we have here.

Second, on the INA provisions, the Government rests on manufactured distinction between framework challenges and individual challenges. That distinction, while clever, is impossible to square with the case law.

Respondents' counsel mentioned *Zadvydas*. But *Zadvydas* points in our direction. Because, if you look at *Zadvydas*, what the Supreme Court instructed lower courts to do when evaluating *Zadvydas* claims, is to look at is removal reasonably foreseeable; meaning, does the continued confinement serve an adequate regulatory purpose. And, so a court conducting a *Zadvydas* review will inevitably have to look at the individual circumstances of the Petitioner while

testing whether the Government's continued detention matches constitutional standards.

In this way, the Government's framework for individual case distinction is a distinction without a jurisdictional difference, because, at some point, a court sitting in habeas jurisdiction will inevitably have to consider the individual circumstances.

But the question before the Court on jurisdiction isn't whether the Court has to -- is looking at Ms. Kordia's individual circumstances, the question is whether the decision we're challenging is discretionary within the meaning of Section 1226(e) and 1252(a)(2)(B). *Zadvydas* makes clear that even where you have to look at is removal reasonably foreseeable, that the constitutional claim is not challenging discretion because it goes to the constitutional limits of the Executive's authority.

And, like I said in my opening, that is exactly what Ms. Kordia does. She's not challenging: was the immigration judge's decision unwise, or was DHS right or wrong in invoking the automatic stay. Her only argument is: does Section 1226(a) give Respondents the authority to detain someone in retaliation for their First Amendment speech. That is a legal constitutional question that, yes, in some very general sense requires identifying her -- or requires working through her individual circumstances, but *Zadvydas*

makes clear that that is not discretionary within the meaning of the statute.

I also heard Respondents' counsel say that *Jennings* supported their framework versus individual distinction. I recognize, just candidly, that there is some language in the *Jennings* plurality that might be able to support Respondents' view. But whatever ambiguity they're picking up on in *Jennings* was resolved in Ms. Kordia's favor by *Najera v. United States*, which is a case that I didn't hear Respondents address and is impossible to square with their distinction between framework and individual cases.

In *Najera*, the Petitioner -- or the Plaintiff, rather -- challenged the legality of his individual confinement as a violation of the Temporary Protected Status statute. The Fifth Circuit relying on *Jennings* said this is not discretionary within the meaning of Section 1226(e) because the Plaintiff is challenging the legal limits either statutorily or constitutionally in the legal limits of the Executive's power to detain him as a TPS holder. Similarly, yes, this case is about Ms. Kordia, but the legal claims only touch on what is the constitutional limits on Respondents' authority under Section 1226(a).

Respondents point out that -- or, in response to Your Honor's question, they said that they disagree that you can just dress up constitutional -- or, rather, "give claims

of constitutional tenor," is the quote I wrote down. But the *Gutierrez-Soto* case we cite in both our briefs, which is a Judge Guaderrama decision out of El Paso, dealt exactly with this issue.

Our argument is not that say the word "constitution" in your claims section of your petition and you get into federal court. Our argument is that when the character of the claim goes to the extent of the Executive's power and not its individualized determination in the agency proceedings, that that falls squarely within the Court's habeas jurisdiction.

I bring up *Gutierrez-Soto* because it is the perfect one-to-one match that rejects Respondents' arguments. There, the Petitioner, among many claims, brought, one, a First Amendment retaliation claim, and, number two, a procedural due process claim.

Now, as we have identified in our briefs, Judge Guaderrama exercised jurisdiction over the First Amendment retaliation claim, acknowledging the exact line we're drawing, that challenges to the constitutional limits of the Executive's power are within this Court's jurisdiction.

But as to the procedural due process claim, Judge Guaderrama looked at the character and substance of that claim and said, look, you're just challenging how I.C.E. weighed these factors that they were supposed to weigh

according to regulations. And that is squarely discretionary, and the Court lacked jurisdiction over it. So, we think, from following *Zadvydas* to *Jennings* to *Najera* and then supplemented by Judge Guaderrama's reason decision in *Gutierrez-Soto*, their arguments are foreclosed by Supreme Court, Fifth Circuit, and persuasive authority from other districts, and the Court should reject them.

Lastly, on *Loa-Herrera*, again, this case predates every one of those cases that I was just discussing. Respondents read that language of, we can't challenge the manner in which the Government exercises its authority, for all it's worth. And they have not identified a single case after *Loa-Herrera* that adopts their broad reading of it.

And, as I heard Respondents' counsel concede, even Judge Stickney and Judge Kinkeade in the *Maramba* decision didn't go as far as Respondents' counsel would have this Court go. *Loa-Herrera* predates all of the relevant modern authority on this -- or recent authority -- on this question, and even the other cases they cite in their brief reject such a broad reading.

Next, on the merits. On the First Amendment claim, Respondents, in passing -- or Respondents' counsel, in passing, mentioned that he disagrees with the characterization of the DHS press releases. At bottom, though, what I heard him say was, yes, I have not -- or we

don't agree with your characterization of the facts, but we haven't presented any evidence on it. And their brief is silent on the factual questions underlying the First Amendment claim.

To recap, starting as a candidate, President Trump stated his intent to set the movement for Palestinian rights back, quote, 25 to 30 years. Then, as soon as he took office, he issued an Executive Order directing not only immigration officials but other law enforcement officers to find ways to target supporters of Palestinian rights. And, as we've made clear, they have -- Attorney General Bondi, Secretary Rubio, and DHS Secretary Noem have used that authority to target other similarly situated non-citizens. Again, *Gutierrez-Soto* is directly on point here.

The Government's argument there exactly match what Respondents' counsel has said today, which is that Ms. Kordia lacked lawful status, so what are we doing here in federal court. *Gutierrez-Soto* said, no, you have presented -- the Petitioners have presented contemporaneous statements of immigration officers talking about and targeting the Petitioner activist there.

Number two, that their communications about the case from the Government. And in that case, the Petitioners were subject to a final order of removal, and so they had their bond revoked. Which, here, it's the exact same thing.

The Government alleges that Ms. Kordia lacks lawful status, but that doesn't foreclose her --

THE COURT: Do you dispute that?

MR. FIFE: We dispute that she's removable, but we have not contested that she had a lapse in lawful status starting in 2022.

THE COURT: Is that a significant distinguishing fact for her case with respect to the other similarly situated cases that you've brought us?

MR. FIFE: No, Your Honor. Because I think, as Respondents' counsel seem to recognize, is that in each of those cases, the Government had asserted that the Petitioners were removable. Some, they had their visas revoked, others they had their LPR status revoked. And in each of those cases, just like Ms. Kordia -- just like I've said here today and we've made clear in the papers, those Petitioners weren't contesting their removal proceedings. It was purely -- because -- if I can try to explain, if I can try to explain.

The similar cases we've identified in those cases, each of the Petitioners swore off a challenge to their removal proceedings because of the jurisdictional bars.

And, even in Dr. Suri's case, the Eastern District of Virginia case, the Government, at oral argument in that case, said he's challenging -- Dr. Suri is challenging the removal proceedings. And they had amended

their petition to make clear that, no, no, no, this was just about confinement. And, so for each of those Petitioners that were released, each of them still have a separate fight on their removal proceedings.

And I do understand that in those cases it is admittedly harder to distinguish between the basis for removal and the retaliatory confinement. But I think, if anything, that just makes clear how much easier this case is on the jurisdictional issues before the Court.

And, ultimately -- and, so I think the other point -- just a factual clarification -- I think regardless that those cases are similar for the reasons I've identified. But Ms. Kordia, I believe, as of this week, the Family-Based Lawful Permanent Resident visa became current, and so she's currently sitting in detention with a visa available for her. And they still have to go through the process to do that, but it's not as if this is someone who had just openly flouted immigration laws; this was someone who thought she had lawful status. And I'd just point that out, to make the record clear, that she is actively pursuing lawful status and defenses to removal.

I want to address a couple other cases. So, on the *AADC* case, Respondents have offered that there are difficult questions of intent and you have to go into the mind of the Executive. But I'd point the Court to the

Supreme Court's decision in *Lozman, L-O-Z-M-A-N, versus Riviera Beach*, 585 U.S. 87, 2018, which is a First Amendment retaliation case in the law enforcement context. And what the Court held in *Lozman* is that when you allege a First Amendment retaliation case predicated on a policy or practice of high-ranking individuals within a government -- there, it was city council members -- that those difficult problems of causality that appear in an individual arrest case where you have to go subjectively into the mind of the officer, that doesn't apply in a policy or practice First Amendment retaliation case, because, there, the type of evidence you're normally relying on is objective evidence.

We're not trying to depose the DHS officials involved in her arrest, or anything like that. What you have instead is objective evidence where DHS and Secretary Rubio and President Trump have told the Court and the public exactly what they're doing; that, we want to set the movement for Palestinian rights back 25 to 30 years, and you have similar enforcement actions across the country, and, as I said, in three different circuits with six different District Judges. And that is compounded by the additional evidence from the immigration practitioners.

And I heard my opposing counsel say that, well, of course, things have gotten more intense. But you have no evidence in the record connecting the increased severity of

immigration enforcement with visa overstay cases. And, instead, the only evidence you have is immigration practitioners with over a hundred years of collective experience who said that they have never seen a case like Ms. Kordia's where a visa overstay --

THE COURT: Go ahead.

MR. FIFE: Oh. I was going to finish and say where the Government has treated visa overstay case so punitively and so intensely.

Did Your Honor have questions on that point?

THE COURT: No.

MR. FIFE: And I'll just make clear that our First Amendment claim, it does not rise or fall on the immigration practitioner's declaration, but rather they are just another indicia that when you have DHS and other high-ranking members targeting Ms. Kordia in press releases saying she attended an April 30th, 2024, protest, that it's the protected speech doing the work in confining her, not her immigration status.

THE COURT: I think her Verified Petition alleges that she engaged in protected speech other than attending the April 30th protest; is that correct?

MR. FIFE: That's correct, Your Honor. She had been to several other similar peaceful demonstrations and continues to be an advocate for Palestinian rights.

And I think that that -- and I think that also really goes -- what I was just saying about the practitioner declarations is that it also goes to why Respondents' reliance on *Demore* is just entirely in opposite.

I heard Respondents' counsel quote the line from *Demore* that says, "Detention is an ordinary part of the immigration process," and applies that to Ms. Kordia's case.

But, number one, *Demore* was not a First Amendment retaliation case and had no similar allegations about the Executive's practice and policy of targeting those who support Palestinian rights.

But, number two, Respondents' argument here today committed the exact error that the Fifth Circuit reversed a district court for in the oo-ay -- *Oyelude* case.

I'm sorry.

THE COURT: I can see it in my head.

MR. FIFE: It's in our reply brief a couple times.

And, in that case, the Fifth Circuit said, oh, well, the District Court relied on that exact line from *Demore* and said that the District Court had a strawman, that line from *Demore*, and that *Demore* was in the context of certain classes of serious criminal aliens under Section 1226(c). But this is a Section 1226(a) case. And that was the basis on which the Fifth Circuit reversed the

District Court in *Oyelude*.

I'm saying it different every time. I'm sorry.

And, so, all that to say, I think, A, *Demore* is in opposite because it doesn't address the claims at issue here, and, B, Respondents have mischaracterized its holding.

On the automatic stay provision, the only point that I think -- there's only a couple of small details I'd like to clean up. Number one is that Petitioner -- or Respondents cite the regulation's history. And that is entirely irrelevant to the claims at issue here. Because the issue is what procedures -- or rather -- let me recite that, I apologize, Your Honor -- is that is irrelevant here, as the Courts in *Mohammed H.* and *Gunaydin* -- which we identify at the top of our reply brief -- explain, it is true -- and we acknowledge this in our opening brief -- that the *Zavala* and *Ashley versus Ridge* cases did involve a prior version of the automatic stay.

But what you can see in the *Mohammed H.* opinion and the *Gunaydin* opinion is that even though it's up to a 130-day period, that it operates the exact same. Respondents rely on the certification from a high-ranking legal officer. But all that requirement does is restate the requirements under Rule 11, which is to be open and candid with the Court and not make frivolous legal arguments. And, so, that is little assurance that this automatic stay provision is

actually being used for a justified reason.

And the point that I would leave this Court on is -- on the automatic stay -- is that Respondents equivocate two hours of confinement with up to 120 days. That is obviously wrong and unnecessarily -- Respondents are right that no one is here complaining about two hours of detention. But, rather it's up to 120 days with no procedure whatsoever by which she can challenge that 120 days.

And just like the Court in *Mohammed H.* found, it operates by fiat. So when it says it's an automatic stay, it literally is automatic in the sense that no court, not Ms. Kordia, not the immigration judge, or the BIA, have any role to play. All the DHS prosecutor has to do is file a slip of paper called the EOIR-43 within 24 hours. That ministerial task is an insufficient showing to justify 120 days of detention.

Lastly, I'd just like to --

THE COURT: In every case or just in this case?

MR. FIFE: As to the procedural?

THE COURT: Correct, the automatic stay.

MR. FIFE: Yes. We are making as-applied challenge to the regulation.

Our argument -- and you can really get this from the Petitioner's Exhibit 6, which is the declaration of Jodi Goodwin that talks about in the ordinary -- and she has

practiced for, you know, over 20 years, but in the cases in which DHS has exercised its automatic stay power, it has exclusively been for individuals with really, really serious criminal offenses.

And, you know, the automatic stay can come up in a variety of other contexts. So, for example, if someone is held on 1226(c), the mandatory provision, they're entitled to a Joseph hearing, and there's a similar automatic stay provision under -- stemming from the Joseph hearing. So, if an immigration judge -- and, so, our challenge is we don't ask the Court to rule on that at all. We're seeking a narrow ruling on the automatic stay provision; that is, as-applied in this case the lack of procedures violates procedural due process.

THE COURT: In the context of a framework claim that the Court doesn't have to worry about any jurisdictions stripping statute?

MR. FIFE: Exactly. Your Honor could write a very narrow opinion because, as we've discussed today, Respondents have conceded jurisdiction over that claim. And -- yeah, that's exactly right. It would be an as-applied claim that there's no dispute the Court has jurisdiction over it.

And, if I could just conclude very briefly with the equities, which I heard -- so, on the equities, we have

identified the irreparable harm to Ms. Kordia and countless others' protected expression, the violations of her religious liberty. Respondents' counsel, when Your Honor asked: are you contesting those allegations, equivocated and said, well, we're not necessarily agreeing with that characterization, but we also don't have anything to say about it. Which, in this particular context where they've had a full opportunity to respond to the Motion for Preliminary Injunction, that sounds like a concession to me.

And the last point is -- the last point is in terms of her health, which is that she is sleeping on the floor -- and Respondents' counsel is right that there is a thin mattress -- she is sleeping on the floor on a thin mattress surrounded by bugs and insects and other people, and that those three things, both individually and combined, constitute an irreparable injury.

And, similarly, for the reasons the Fifth Circuit's explained in the cases in our reply brief, protecting the First and Fifth Amendment and preventing religious liberty violations is always in the public interest.

Now, there was a discussion about whether these religious liberty violations are cognizable in habeas. And I think we've been candid throughout these proceedings, which is we identified in the initial petition that the RFRA claim,

the Religious Freedom Restoration Act claim, was a stand-alone civil claim that doesn't provide an independent basis for habeas relief.

And, similarly, in our reply, we also recognize that, well, yes, this is an independent reason why her confinement is unlawful. But when the Court gets to the equities, the analysis is exactly that, it's equitable; meaning, that the Court should look at the totality of circumstances. And I think whether we're proceeding under Rule -- whether we're in Rule 65 or the *Calley* framework, that's exactly what the Court should do.

And, so do I think if we only won on the religious liberty violations, that we would have a habeas claim? No. But do I think that at the equity stage that the Court can account for the conditions in which Ms. Kordia is confined, absolutely.

THE COURT: But it is correct that you are not seeking preliminary injunctive relief with respect to any of the alleged RFRA violations or conditions of confinement?

MR. FIFE: Absolutely, Your Honor.

I am familiar with the COVID cases that Respondents' counsel mentioned, and we are not moving for a Preliminary Injunction on those claims.

But I think the same way, if you have a Preliminary Injunction and you're asking what are the harms

to the moving party or what are the harms to Respondents, you're not just bound by the merits claims, you're also conducting an equitable analysis of the totality of the circumstances. And, so we think there it is appropriate.

And, if I could, Your Honor, I would just like to end where I've started, which is that Ms. Kordia is a 32-year-old Palestinian woman confined 1,500 miles from home because she attended a protest in support of Palestinian rights. Tonight, she will sleep on a cold concrete floor on a thin mattress surrounded by bugs and insects, as she has done almost every night for the last two and a half months. And she will wake up tomorrow, as she has every morning for the last two months, without any Halal food, all because the most powerful man in the country disagreed with her protected expression.

That is as extraordinary as it is unconstitutional, and the Court should recommend granting Ms. Kordia's Motion.

THE COURT: Thank you. The Court will take this matter under advisement and endeavor to get a written recommendation filed as soon as possible.

MR. FIFE: Thank you.

THE COURT: We're adjourned.

THE COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 11:59 AM.)

CERTIFICATION

I, Rachel C. Braun, United States Court Reporter for the United States District Court in and for the Northern District of Texas, Dallas Division, hereby certify that the above and foregoing contains a true and correct transcript of the proceedings in the above entitled and numbered cause.

WITNESS MY HAND on this 12th day of June, 2025.

/s/ Rachel C. Braun_____
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EXHIBIT "13"

PETITIONER-PLAINTIFF, LEQAA KORDIA'S MOTION FOR PRELIMINARY INJUNCTION

Department of Homeland Security Motion for Discretionary Stay (July 2, 2025)

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DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	
KORDIA, Leqaa	File No.: [redacted]
In bond proceedings	

DEPARTMENT OF HOMELAND SECURITY
EMERGENCY DISCRETIONARY STAY MOTION IN EOIR-43 CASE

INTRODUCTION

Pursuant to 8 C.F.R. § 1003.19(i)(1), the Department of Homeland Security (DHS) respectfully requests that the Board of Immigration Appeals (Board) issue, on an emergency basis, a discretionary stay of the Immigration Judge's April 3, 2025, order granting the respondent bond in the amount of $20,000. This case involves an EOIR-43 Automatic Stay, which expires on July 2, 2025. *See* 8 CFR 1003.19(i)(2). DHS requests the instant discretionary stay, pursuant to 8 C.F.R. § 1003.6(c)(5).. A Notice of Appeal of the immigration judge's bond decision was previously filed and accepted by the Board on April 15, 2025. A briefing schedule was issued on April 17, 2025, and a decision from the Board remains pending.

The Immigration Judge erred in ordering the respondent released on bond and setting bond at $20,000 because the respondent failed to meet her burden of establishing she is not a danger to persons or property and that she is not a danger to the community. The Immigration Judge further erred in finding that the respondent does not pose a flight risk. The DHS respectfully requests that the Board reverse the Immigration Judge's order granting the respondent's request for a change in custody status.

STANDARD OF REVIEW

The Board has the authority to stay an Immigration Judge's order redetermining custody when DHS appeals the custody decision or on its own motion. 8 C.F.R. § 1003.19(i)(1). DHS may seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time. *Id.* The Board reviews an immigration judge's findings of fact, which includes predictive findings of what may or may not occur in the future, under a clearly erroneous standard of review. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 587–90 (BIA 2015). Inferences from direct and circumstantial evidence are also reviewed for

clear error. The Board reviews all questions of law, discretion, judgment, and all other issues on appeal de novo. 8 C.F.R. § 1003.1(d)(3)(ii)).

The issue of whether the respondent is a danger to the community is a predictive finding of fact that the Board reviews for clear error. *See Jurek v. Texas*, 428 U.S. 262, 275 (1976). While the issue of whether the respondent poses a flight risk is also a predictive finding of fact that the Board reviews for clear error, the factors that the Immigration Judge considers in setting a bond amount for risk of flight are discretionary and thus reviewed de novo. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (stating that an immigration judge has broad discretion in deciding the factors that he may consider in custody redeterminations); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA 2020) (citing *Guerra*, 24 I&N Dec. at 40)).

SUMMARY OF THE ARGUMENT

The Immigration Judge erroneously granted the respondent's request for a change in custody status and set bond in the amount of $20,000 after finding that she met her burden in demonstrating that she is not a danger to the community under INA § 236(a). Specifically, the Immigration Judge found that the respondent did not pose a danger to the community after being arrested for disorderly conduct at a protest near Columbia University after disregarding the police officers' orders to disperse. Moreover, the Immigration Judge found that the respondent did not pose a danger to the community despite having sent numerous large payments to individuals in Palestine and Jordan while not having work authorization or any proof of income. Assuming *arguendo* that the respondent demonstrated she was not a danger to the community, the Immigration Judge erred in finding that the respondent established she is not a flight risk. Here, the Immigration Judge found that the respondent's family ties to the United States and potential relief outweighed the fact that she initially hid from and evaded detection from Homeland Security

Investigations (HSI), and failed to provide any evidence of a financial sponsor or her and her family's financial resources. As such, the Board should reverse the Immigration Judge's finding that the respondent met her burden establishing she is not a danger to the community and does not pose a risk of flight, and order that the respondent be held without bond.

STATEMENT OF FACTS

The respondent, a stateless native and citizen, last entered the United States as a B2 nonimmigrant visitor on March 19, 2016. Exh. 1. The respondent adjusted her status to an F-1 nonimmigrant on or about January 23, 2017. *Id.* On or about June 5, 2017, the respondent's United States citizen mother submitted a Form I-130, Petition for Alien Relative, on the respondent's behalf. *Id.* The petition was approved but a visa is not yet available for the respondent to adjust status. *Id.* On or about March 18, 2021, the respondent's F-1 visa was terminated in the Student & Exchange Visitor Information System (SEVIS) for failure to maintain her student status. *Id.* The respondent's F-1 visa was reinstated on or about May 5, 2021; however, it was again terminated in SEVIS on or about January 26, 2022, for failure to maintain her student status. *Id.* The respondent has no lawful status in the United States and has been unlawfully present in the United States since approximately January 26, 2022. *Id.* On or about March 15, 2025, DHS issued the respondent a Notice to Appear (NTA) charging her as removable from the United States under INA § 237(a)(1)(C)(i) for failure to maintain her F-1 status. *Id.* On April 3, 2025, the immigration judge granted the respondent's release from custody under a bond of $20,000. The immigration judge did not issue a written decision. The DHS argued that the respondent is a danger to the community given her arrest on April 30, 2024, at a protest that involved "yelling/blocking location and not following orders of police officers." Exh. 3 at 45. The DHS argued that this conduct shows a disregard for law enforcement authority and the laws of this country. The DHS also argued that

the evidence shows the respondent is sending large amounts of money to individuals in the Palestinian Authority and Jordan, but she does not have work authorization and provided no evidence of the source of these funds. Moreover, the evidence shows that the respondent's landlord and possible employer is a Hamas sympathizer. The respondent claimed that the money was sent to her family, specifically her aunt, and she was doing her mom a favor by going and sending the money on her behalf.

The immigration judge found that the DHS evidence only shows at most two transactions that the respondent sent over the past few years. The immigration judge found that based on the record, mainly the HSI investigation reports submitted by DHS, she does not believe that there is sufficient evidence to show that the respondent poses a danger to the United States. The immigration judge found that the DHS cannot make connections to show the respondent is giving material support to a terrorist organization without more evidence of who received the money.

With respect to flight risk, the immigration judge found that the respondent has extensive family ties, support in this country, and potential relief in this country if a visa becomes available through her approved Form I-130 Petition. The respondent also filed an I-589, Application for Asylum and for Withholding of Removal. The DHS argued that the respondent did not submit evidence of an immigration sponsor or any evidence of financial stability from anyone in the respondent's family. Moreover, the respondent has been working unlawfully in the United States and has been unlawfully present in the United States since January 26, 2022. Additionally, the respondent has not tried to gain lawful status since that time, until being detained by DHS. The respondent also refused to voluntarily meet with HSI agents, and it took her approximately one week to surrender herself to authorities. The evidence shows that the respondent was hiding from immigration officials and intentionally evading detection.

The immigration judge found that a bond of $20,000 is an appropriate amount to mitigate the flight risk and ensure that the respondent appears for future hearings, and it would also be a little sacrifice to the family if she does not show up and bond forfeited.

ARGUMENT

1. THE IMMIGRATION JUDGE ERRED WHEN HE ORDERED THE RESPONDENT RELEASED ON BOND IN THE AMOUNT OF $20,000, WHERE THE RESPONDENT FAILED TO ESTABLISH THAT SHE IS NOT A DANGER TO THE COMMUNITY.

An alien in a custody determination hearing pursuant to INA § 236(a) must establish that he or she does not present a danger to persons or property. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). To evaluate whether an alien has met this burden, the Immigration Judge must consider whether he or she poses a threat to national security, a danger to the community at large, is likely to abscond, or is otherwise a poor bail risk. *Guerra*, 24 I&N Dec. at 40.

The question of whether an alien is a danger to the community is broader than determining if the record contains evidence of past violence or direct evidence of an inclination toward violence. *Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016). An Immigration Judge should consider any evidence in the record that is probative and specific when determining whether an alien is a danger to the community. *Guerra*, 24 I&N Dec. at 41. This includes the "specific circumstances surrounding the alien's conduct" to determine whether bond is warranted, and if so, the appropriate amount. *Siniauskas*, 27 I&N Dec. at 208. The Immigration Judge should also consider:

> (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal history, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee

> prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

Guerra, 24 I&N Dec. at 40.

An Immigration Judge may not disregard or ignore relevant and material evidence when determining whether an alien is a danger to the community. *See generally* 8 C.F.R. § 1240.1(c) (requiring the Immigration Judge to receive and consider material and relevant evidence in removal proceedings); *see also Matter of Herrera Del Orden*, 25 I&N Dec. 589, 593–94 (BIA 2011) (instructing that an Immigration Judge should consider any relevant and probative evidence in a removal proceeding). If an alien cannot demonstrate that he or she is not a danger to the community, no bond should be set. *Fatahi*, 26 I&N Dec. at 793–94; *see also Urena*, 25 I&N Dec. at 141 ("An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community.").

Here, the respondent has failed to establish that she is not a danger to the community. Evidence submitted by the DHS shows that between January 2021 to January 2025, the respondent made numerous transactions sending funds to individuals located in the Palestinian Authority and Jordan, some as large as $2,000. Exh. 3 at 4. The source and recipients of the funds remain under investigation by the DHS. The DHS evidence also shows that the respondent's landlord and possible employer is a Hamas sympathizer. Exh. 3 at 14, 16. Moreover, there has been no evidence presented in the instant matter, other than a statement from the claimant's attorney claiming that the money was sent to relatives, to negate or diminish any of the information contained in HSI's reports submitted to the court.

Moreover, the DHS evidence further shows that New York Police Department (NYPD) officers apprehended the respondent on April 30, 2024. Exh. 3 at 43–45. The incident record shows

she was apprehended because she was "blocking a gate . . . preventing anyone from entering & exiting" and that she "failed to comply" with police commands to disperse. Exh. 3 at 45.

As the respondent has not met her burden in establishing that she is not a danger to the community, the Immigration Judge erred in ordering the respondent released on bond in the amount of $20,000.

2. THE IMMIGRATION JUDGE ERRED WHEN HE ORDERED THE RESPONDENT RELEASED ON BOND IN THE AMOUNT OF $20,000, WHERE THE RESPONDENT FAILED TO ESTABLISH THAT SHE DOES NOT POSE A FLIGHT RISK.

Even assuming, *arguendo*, that the respondent met her burden to establish that she is not a danger to the community, the Immigration Judge nonetheless erred in granting her request for a change in custody status and setting bond in the amount of $20,000 because the respondent failed to show she is not a flight risk. Only if an alien demonstrates that he or she is not a danger to the community should an immigration judge then determine the extent of flight risk posed by the alien. *Urena*, 25 I&N Dec. at 141 (citing *Matter of Drysdale*, 20 I&N Dec. 815, 817–18 (BIA 1994)). An alien in a custody determination hearing pursuant to INA § 236(a) must establish that he or she does not present a risk of flight and is likely to attend future immigration proceedings. *R-A-V-P-*, 27 I&N Dec. at 804 (citing *Siniauskas*, 27 I&N Dec. at 207); 8 C.F.R. § 1236.1(c)(8)). In determining whether an alien is a flight risk, the Immigration Judge may consider "any 'probative and specific' evidence." *Id.* (citing *Guerra*, 24 I&N Dec. at 40-41). Similar to a dangerousness determination, this includes considering the "specific circumstances surrounding the alien's conduct" to determine whether bond is warranted, and if so, the appropriate amount. *Siniauskas*, 27 I&N Dec. at 208; *see also Guerra*, 24 I&N Dec. at 40. An Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. *Guerra*,

24 I&N Dec. at 40. An Immigration Judge may decide to give greater weight to one factor over others, but the decision must be reasonable. *Id.*

Here, the respondent has failed to establish that she does not pose a flight risk because she intentionally evaded detection by DHS. On March 6, 2025, a special agent with HSI contacted the respondent and told her that they needed to speak with her about her immigration status. Exh. 3 at 6. The respondent told the agent that she would meet him in the next 30 minutes, but she did not arrive. Exh. 3 at 6. The respondent's refusal to meet with HSI required an extensive investigation into her whereabouts. Exh. 3 at 6–21. *See Guerra*, 24 I&N Dec. at 40 (holding attempts by the alien to flee prosecution or otherwise escape from authorities is a relevant factor to find a flight risk). On March 13, 2025, the respondent finally self-surrendered to HSI. The DHS evidence indicates that the respondent was intentionally evading HSI agents and actively concealed herwhereabouts to avoid detection and apprehension for her immigration violations. Exh. 3 at 6–24.

Moreover, the respondent has failed to provide evidence demonstrating that a financial sponsor in the United States will ensure she appears at all future proceedings. As noted by the immigration judge, there is no information about what the respondent, her mother, or her uncle, who claims to have the money for her bond, do for work and how they support themselves. As such, the Immigration Judge did not have sufficient information to assess an appropriate bond amount to ensure that the respondent would show up for future proceedings and that it would be a disincentive to the family if she were to not show up to future proceedings.

Additionally, the respondent has provided no proof of any legal work history in the United States and has repeatedly violated the United States' immigration laws by falling out of her student visa status and continuing to reside in the United States without any legal status for over three

years. *Guerra*, 24 I&N Dec. at 40 (holding alien's history of immigration violations and employment history are relevant factors for bond proceedings). As the respondent has not met her burden in establishing that she does not pose a flight risk, the Immigration Judge erred in ordering the respondent released on bond in the amount of $20,000.

The Department of Homeland Security ("DHS"), by and through its Assistant Chief Counsel, attaches the following documents in support of the present Discretionary Stay Motion in EOIR-43 Case.

TABLE OF CONTENTS

TAB	Document
A	Form EOIR-26, Notice of Appeal
C	Immigration Judge Decision June 28, 2025
D	Form I-862, Notice to Appear

CONCLUSION

The Immigration Judge erroneously granted the respondent's request for a change in custody status by setting bond in the amount of $20,000, because the respondent failed to meet her burden of establishing that she is not a danger to the community and does not pose a flight risk. Based on the foregoing facts, DHS respectfully requests that the Board, on an emergency basis, issue a discretionary stay of the Immigration Judge's April 3, 2025, order granting the respondent bond.

Respectfully submitted on the 2nd day of July, 2025.

CARLOS A RODRIGUEZ JR
Digitally signed by CARLOS A RODRIGUEZ JR
Date: 2025.07.02 16:14:11 -05'00'

Carlos A Rodriguez Jr
Assistant Chief Counsel

David Wallen
Deputy Chief Counsel
Jo Ann McLane
Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

TAB A

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB# 1125-0002

Notice of Appeal from a Decision of an Immigration Judge

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

Kordia, Leqaa [redacted]

For Official Use Only

Staple Check or Money Order Here. Include Name(s) and "A" Number(s) on the face of the check or money order.

WARNING: Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☐ the Respondent/Applicant ☒ DHS-ICE *(Mark only one box.)*

3. I am ☒ DETAINED ☐ NOT DETAINED *(Mark only one box.)*

4. My last hearing was at Prairieland Detention Center, Alvarado, TX *(Location, City, State)*

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☐ I am filing an appeal from the Immigration Judge's decision *in* ***merits*** *proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated _____.

☒ I am filing an appeal from the Immigration Judge's decision *in* ***bond*** *proceedings* dated April 3, 2025. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☒ Yes. ☐ No.)

☐ I am filing an appeal from the Immigration Judge's decision ***denying a motion to reopen or a motion to reconsider*** dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

EOIR – 13o6f135

6. **State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.**

See attached.

(Attach additional sheets if necessary)

WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☒ No

8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☐ Yes ☒ No

9. If you are unrepresented, do you give consent to the BIA Pro Bono Project to have your case screened by the Project for potential placement with a free attorney or accredited representative, which may include sharing a summary of your case with potential attorneys and accredited representatives? *(There is no guarantee that your case will be accepted for placement or that an attorney or accredited representative will accept your case for representation)* ☐ Yes ☒ No

WARNING: If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

10. **Print Name:** Anastasia Norcross

11. **Sign Here:** X ANASTASIA S NORCROSS Digitally signed by ANASTASIA S NORCROSS Date: 2025.04.15 09:26:01 -05'00' 4/15/2025

Signature of Person Appealing *(or attorney or representative)* Date

EOIR – 24o6f135

12.

Mailing Address of Respondent(s)/Applicant(s)	Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)
Leqaa Kordia (Name)	Muhammad Omar Chaudhry (Name)
[redacted]. (Street Address)	55-21 69th St. (Street Address)
(Apartment or Room Number)	2nd Floor (Suite or Room Number)
[redacted] (City, State, Zip Code)	Maspeth, NY 11378 (City, State, Zip Code)
(Telephone Number)	(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

13.

PROOF OF SERVICE (You Must Complete This)

I Anastasia Norcross (Name) mailed or delivered a copy of this Notice of Appeal

on _____ (Date) to _____ (Opposing Party)

at _____ (Number and Street, City, State, Zip Code)

☒ No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

SIGN HERE → X ANASTASIA S NORCROSS Digitally signed by ANASTASIA S NORCROSS Date: 2025.04.15 09:26:29 -05'00'

Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee payment receipt, fee, or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☐ Read all of the General Instructions.
- ☐ Provided all of the requested information.
- ☐ Completed this form in English.
- ☐ Provided a certified English translation for all non-English attachments.
- ☐ Signed the form.
- ☐ Served a copy of this form and all attachments on the opposing party, if applicable.
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee payment receipt, fee, or Fee Waiver Request.
- ☐ If represented by attorney or representative, attach a completed and signed EOIR-27 for each respondent or applicant.

EOIR – 15o6f135

INTRODUCTION

The U.S. Department of Homeland Security (DHS) respectfully submits this Notice of Appeal in lieu of a brief from the immigration judge's April 3, 2025, decision granting the respondent's request for a change in custody status and setting bond in the amount of $20,000 pursuant to Section 236(a) of the Immigration and Nationality Act (INA).[1] The immigration judge erred in ordering the respondent released on bond and setting bond at $20,000 because the respondent failed to meet her burden of establishing she is not a danger to persons or property and that she is not a danger to the community. The immigration judge further erred in finding that the respondent does not pose a flight risk. The DHS respectfully requests that the Board of Immigration Appeals (Board) reverse the immigration judge's order granting the respondent's request for a change in custody status.

DHS further requests that this case be adjudicated by a three-member panel. The instant appeal meets the criteria for three-member panel review because the facts and circumstances of this case present: (1) the need to review a decision by an Immigration Judge that is not in conformity with the law or with applicable precedents; and (2) the need to reverse a decision of an Immigration Judge, other than a reversal under 8 C.F.R. § 1003.1(e)(5); 8 C.F.R. § 1003.1(e)(6)(iii), (v)–(vi).

ISSUES PRESENTED

1. Did the immigration judge erroneously order the respondent released on bond in the amount of $20,000, where the respondent failed to meet her burden of establishing that she is not a danger to the community, when the respondent disregarded police orders to disperse from a protest and when she is sending payments to unknown individuals in Palestine?

[1] As noted on Form EOIR-26 at question 8, DHS will not be filing a brief in this case. Thus, this Notice of Appeal includes the entirety of DHS's arguments on appeal.

2. Did the immigration judge erroneously order the respondent released on bond in the amount of $20,000 where the respondent failed to meet her burden of establishing that she does not pose a flight risk despite intentionally evading detection by DHS, failing to provide any financial information, and remaining out of legal status for over 3 years?

STANDARD OF REVIEW

The Board reviews an immigration judge's findings of fact, which includes predictive findings of what may or may not occur in the future, under a clearly erroneous standard of review. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 587–90 (BIA 2015). Inferences from direct and circumstantial evidence are also reviewed for clear error. The Board reviews all questions of law, discretion, judgment, and all other issues on appeal de novo. 8 C.F.R. § 1003.1(d)(3)(ii)).

The issue of whether the respondent is a danger to the community is a predictive finding of fact that the Board reviews for clear error. *See Jurek v. Texas*, 428 U.S. 262, 275 (1976). While the issue of whether the respondent poses a flight risk is also a predictive finding of fact that the Board reviews for clear error, the factors that the immigration judge considers in setting a bond amount for risk of flight are discretionary and thus reviewed de novo. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (stating that an immigration judge has broad discretion in deciding the factors that he may consider in custody redeterminations); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 805 (BIA 2020) (citing *Guerra*, 24 I&N Dec. at 40)).

SUMMARY OF THE ARGUMENT

The immigration judge erroneously granted the respondent's request for a change in custody status and set bond in the amount of $20,000 after finding that she met her burden in demonstrating that she is not a danger to the community under INA § 236(a). Specifically, the immigration judge found that the respondent did not pose a danger to the community after being arrested for disorderly conduct at a protest near Columbia University after disregarding the police

officers' orders to disperse. Moreover, the immigration judge found that the respondent did not pose a danger to the community despite having sent numerous large payments to individuals in Palestine and Jordan while not having work authorization or any proof of income. Assuming *arguendo* that the respondent demonstrated she was not a danger to the community, the immigration judge erred in finding that the respondent established she is not a flight risk. Here, the immigration judge found that the respondent's family ties to the United States and potential relief outweighed the fact that she initially hid from and evaded detection from Homeland Security Investigations (HSI), and failed to provide any evidence of a financial sponsor or her and her family's financial resources. As such, the Board should reverse the immigration judge's finding that the respondent met her burden establishing she is not a danger to the community and does not pose a risk of flight, and order that the respondent be held without bond.

STATEMENT OF FACTS

The respondent, a stateless native and citizen, last entered the United States as a B2 nonimmigrant visitor on March 19, 2016. Exh. 1. The respondent adjusted her status to an F-1 nonimmigrant on or about January 23, 2017. *Id.* On or about June 5, 2017, the respondent's United States citizen mother submitted a Form I-130, Petition for Alien Relative, on the respondent's behalf. *Id.* The petition was approved but a visa is not yet available for the respondent to adjust status. *Id.* On or about March 18, 2021, the respondent's F-1 visa was terminated in the Student & Exchange Visitor Information System (SEVIS) for failure to maintain her student status. *Id.* The respondent's F-1 visa was reinstated on or about May 5, 2021; however, it was again terminated in SEVIS on or about January 26, 2022, for failure to maintain her student status. *Id.* The respondent has no lawful status in the United States and has been unlawfully present in the United States since approximately January 26, 2022. *Id.* On or about March 15, 2025, DHS issued the

respondent a Notice to Appear (NTA) charging her as removable from the United States under INA § 237(a)(1)(C)(i) for failure to maintain her F-1 status. *Id.* On April 3, 2025, the immigration judge granted the respondent's release from custody under a bond of $20,000. The immigration judge did not issue a written decision. The DHS argued that the respondent is a danger to the community given her arrest on April 30, 2024, at a protest that involved "yelling/blocking location and not following orders of police officers." Exh. 3 at 45. The DHS argued that this conduct shows a disregard for law enforcement authority and the laws of this country. The DHS also argued that the evidence shows the respondent is sending large amounts of money to individuals in the Palestinian Authority and Jordan, but she does not have work authorization and provided no evidence of the source of these funds. Moreover, the evidence shows that the respondent's landlord and possible employer is a Hamas sympathizer. The respondent claimed that the money was sent to her family, specifically her aunt, and she was doing her mom a favor by going and sending the money on her behalf.

The immigration judge found that the DHS evidence only shows at most two transactions that the respondent sent over the past few years. The immigration judge found that based on the record, mainly the HSI investigation reports submitted by DHS, she does not believe that there is sufficient evidence to show that the respondent poses a danger to the United States. The immigration judge found that the DHS cannot make connections to show the respondent is giving material support to a terrorist organization without more evidence of who received the money.

With respect to flight risk, the immigration judge found that the respondent has extensive family ties, support in this country, and potential relief in this country if a visa becomes available through her approved Form I-130 Petition. The respondent also filed an I-589, Application for Asylum and for Withholding of Removal. The DHS argued that the respondent did not submit

evidence of an immigration sponsor or any evidence of financial stability from anyone in the respondent's family. Moreover, the respondent has been working unlawfully in the United States and has been unlawfully present in the United States since January 26, 2022. Additionally, the respondent has not tried to gain lawful status since that time, until being detained by DHS. The respondent also refused to voluntarily meet with HSI agents, and it took her approximately one week to surrender herself to authorities. The evidence shows that the respondent was hiding from immigration officials and intentionally evading detection.

The immigration judge found that a bond of $20,000 is an appropriate amount to mitigate the flight risk and ensure that the respondent appears for future hearings, and it would also be a little sacrifice to the family if she does not show up and bond forfeited.

ARGUMENT

1. THE IMMIGRATION JUDGE ERRED WHEN SHE ORDERED THE RESPONDENT RELEASED ON BOND IN THE AMOUNT OF $20,000, WHERE THE RESPONDENT FAILED TO ESTABLISH THAT SHE IS NOT A DANGER TO THE COMMUNITY.

An alien in a custody determination hearing pursuant to INA § 236(a) must establish that he or she does not present a danger to persons or property. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). To evaluate whether an alien has met this burden, the immigration judge must consider whether he or she poses a threat to national security, a danger to the community at large, is likely to abscond, or is otherwise a poor bail risk. *Guerra*, 24 I&N Dec. at 40.

The question of whether an alien is a danger to the community is broader than determining if the record contains evidence of past violence or direct evidence of an inclination toward violence. *Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016). An immigration judge should consider any evidence in the record that is probative and specific when determining whether an alien is a danger to the community. *Guerra*, 24 I&N Dec. at 41. This includes the "specific

circumstances surrounding the alien's conduct" to determine whether bond is warranted, and if so, the appropriate amount. *Siniauskas*, 27 I&N Dec. at 208. The immigration judge should also consider:

> (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal history, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

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An immigration judge may not disregard or ignore relevant and material evidence when determining whether an alien is a danger to the community. *See generally* 8 C.F.R. § 1240.1(c) (requiring the immigration judge to receive and consider material and relevant evidence in removal proceedings); *see also Matter of Herrera Del Orden*, 25 I&N Dec. 589, 593–94 (BIA 2011) (instructing that an immigration judge should consider any relevant and probative evidence in a removal proceeding). If an alien cannot demonstrate that he or she is not a danger to the community, no bond should be set. *Fatahi*, 26 I&N Dec. at 793–94; *see also Urena*, 25 I&N Dec. at 141 ("An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community.").

Here, the respondent has failed to establish that she is not a danger to the community. Evidence submitted by the DHS shows that between January 2021 to January 2025, the respondent made numerous transactions sending funds to individuals located in the Palestinian Authority and Jordan, some as large as $2,000. Exh. 3 at 4. The source and recipients of the funds remain under investigation by the DHS. The DHS evidence also shows that the respondent's landlord and

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Moreover, the DHS evidence further shows that New York Police Department (NYPD) officers apprehended the respondent on April 30, 2024. Exh. 3 at 43–45. The incident record shows she was apprehended because she was "blocking a gate . . . preventing anyone from entering & exiting" and that she "failed to comply" with police commands to disperse. Exh. 3 at 45.

As the respondent has not met her burden in establishing that she is not a danger to the community, the immigration judge erred in ordering the respondent released on bond in the amount of $20,000.

2. THE IMMIGRATION JUDGE ERRED WHEN SHE ORDERED THE RESPONDENT RELEASED ON BOND IN THE AMOUNT OF $20,000, WHERE THE RESPONDENT FAILED TO ESTABLISH THAT SHE DOES NOT POSE A FLIGHT RISK.

Even assuming, *arguendo*, that the respondent met her burden to establish that she is not a danger to the community, the immigration judge nonetheless erred in granting her request for a change in custody status and setting bond in the amount of $20,000 because the respondent failed to show she is not a flight risk. Only if an alien demonstrates that he or she is not a danger to the community should an immigration judge then determine the extent of flight risk posed by the alien. *Urena*, 25 I&N Dec. at 141 (citing *Matter of Drysdale*, 20 I&N Dec. 815, 817–18 (BIA 1994)). An alien in a custody determination hearing pursuant to INA § 236(a) must establish that he or she does not present a risk of flight and is likely to attend future immigration proceedings. *R-A-V-P-*, 27 I&N Dec. at 804 (citing *Siniauskas*, 27 I&N Dec. at 207); 8 C.F.R. § 1236.1(c)(8)). In determining whether an alien is a flight risk, the immigration judge may consider "any 'probative

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Here, the respondent has failed to establish that she does not pose a flight risk because she intentionally evaded detection by DHS. On March 6, 2025, a special agent with HSI contacted the respondent and told her that they needed to speak with her about her immigration status. Exh. 3 at 6. The respondent told the agent that she would meet him in the next 30 minutes, but she did not arrive. Exh. 3 at 6. The respondent's refusal to meet with HSI required an extensive investigation into her whereabouts. Exh. 3 at 6–21. *See Guerra*, 24 I&N Dec. at 40 (holding attempts by the alien to flee prosecution or otherwise escape from authorities is a relevant factor to find a flight risk). On March 13, 2025, the respondent finally self-surrendered to HSI. The DHS evidence indicates that the respondent was intentionally evading HSI agents and actively concealed here whereabouts to avoid detection and apprehension for her immigration violations. Exh. 3 at 6–24.

Moreover, the respondent has failed to provide evidence demonstrating that a financial sponsor in the United States will ensure she appears at all future proceedings. As noted by the immigration judge, there is no information about what the respondent, her mother, or her uncle, who claims to have the money for her bond, do for work and how they support themselves. As such, the immigration judge did not have sufficient information to assess an appropriate bond

amount to ensure that the respondent would show up for future proceedings and that it would be a disincentive to the family if she were to not show up to future proceedings.

Additionally, the respondent has provided no proof of any legal work history in the United States and has repeatedly violated the United States' immigration laws by falling out of her student visa status and continuing to reside in the United States without any legal status for over three years. *Guerra*, 24 I&N Dec. at 40 (holding alien's history of immigration violations and employment history are relevant factors for bond proceedings). As the respondent has not met her burden in establishing that she does not pose a flight risk, the immigration judge erred in ordering the respondent released on bond in the amount of $20,000.

CONCLUSION

The immigration judge erroneously granted the respondent's request for a change in custody status by setting bond in the amount of $20,000, because the respondent failed to meet her burden of establishing that she is not a danger to the community and does not pose a flight risk. The DHS therefore requests that the Board reverse the immigration judge's order granting the respondent's request for a change in custody status.

Respectfully submitted on April 15, 2025,

ANASTASIA S NORCROSS
Digitally signed by ANASTASIA S NORCROSS
Date: 2025.04.15 09:23:05 -05'00'

Stacy Norcross
Assistant Chief Counsel
Mary Jane Zamarripa
Deputy Chief Counsel
Jo Ann McLane
Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

[redacted]

EOIR-43 Senior Legal Official Certification

I certify that I have approved the filing of the notice of appeal in this case according to review procedures established by U.S. Immigration & Customs Enforcement of the Department of Homeland Security.

I further certify that I am satisfied that the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent. Further, the legal arguments, as specifically warranted above, may be premised on the alien being subject to mandatory detention pursuant to 236(c) of the Immigration and Nationality Act, 8 U.S.C. § 1226(c).

April 14, 2025
Date

EMILY B SWANSON
Digitally signed by EMILY B SWANSON
Date: 2025.04.14 15:38:27 -05'00'

Emily B. Swanson
Acting Chief Counsel, OPLA San Antonio
U.S. Immigration & Customs Enforcement

TAB B

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
PORT ISABEL IMMIGRATION COURT

IN THE MATTER OF:	)	IN BOND PROCEEDINGS
	)	
KORDIA, Leqaa	)	A [redacted]
	)	
RESPONDENT	)	**DETAINED**

ON BEHALF OF RESPONDENT:
Shauky Michael Musa-Obregon, Esq.
Musa-Obregon Law PC
55-21 69th St., 2nd Fl.
Maspeth, NY 11378

ON BEHALF OF THE DEPARTMENT:
Stacy Norcross, Esq.
Assistant Chief Counsel
27991 Buena Vista Blvd.
Los Fresnos, TX 78566

BOND MEMORANDUM

Respondent is a thirty-two-year-old female, native and citizen of stateless. Exhibit (Exh.) 1-B, Tab G. The Department placed Respondent in custody following an encounter on March 13, 2025, in Newark, New Jersey. Exh. 3-B at 23. On March 27, 2025, Respondent filed a bond redetermination request. Exh. 1-B. At the bond hearing on April 3, 2025, the Court granted Respondent's request for a change in custody status, setting her bond at $20,000. *See* Order of the Immigration Judge (April 3, 2025). This memorandum provides the basis for the Court's grant of bond.

In a custody determination, the Court should first determine whether an alien poses a danger to the community, and, if not, whether she is likely to appear for future proceedings before the Court. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). The Constitution does not guarantee an alien in removal proceedings a right to release on bond. *Carlson v. Landon*, 342 U.S. 524, 534 (1952). An applicant bears the burden to establish she merits release on bond. *Matter of Guerra*, 24 I&N Dec. at 40; *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA 1999). When an alien is not subject to mandatory detention, the Court has broad discretion in deciding whether she will be released. *Matter of Guerra*, 24 I&N Dec. at 39; *see also Carlson v. Landon*, 342 U.S. at 540. An alien who poses a danger to persons or property shall not be released during pending removal proceedings. *See Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994). In the absence of a conviction, evidence of serious criminal conduct, including police reports, which is "probative and specific" to the danger a respondent poses to her community may outweigh other factors and provide a reasonable basis for denying bond. *Matter of Guerra*, 24 I&N Dec. at 40; *see also Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) (stating immigration judges may consider both arrests and convictions in custody determinations).

Where an immigration judge concludes an applicant is not a danger to the community, the Court must next consider whether the applicant is a flight risk unlikely to appear for future proceedings. *See Matter of Patel*, 15 I&N Dec. 666 (1976) (factors unique to each noncitizen must be evaluated in determining suitability for release from custody). In making this decision, the Court

can consider many factors including: (1) whether the applicant has a fixed address in the United States; (2) her length of residence in the United States; (3) her family ties in the United States, and whether they may entitle her to reside permanently in the United States in the future; (4) her employment history; (5) her record of appearance in court; (6) her criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) her history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) her manner of entry to the United States. *Matter of Guerra*, 24 I&N Dec. at 40. This list of factors is not exhaustive, and any reliable evidence in the record may be considered. 8 C.F.R. § 1003.19(d). An immigration judge may give greater or lesser weight to any given factor or factors, provided the ultimate conclusion is reasonable. *Matter of Guerra*, 24 I&N Dec. at 40. Family and community ties may demonstrate the applicant is not a flight risk but generally do not demonstrate she is not a danger to the community. *Siniauskas*, 27 I&N Dec.at 209-210.

Here, the Court finds that Respondent is not a danger to the community. The Department argues that Respondent is a danger to the community because of her arrest at a protest and because she has sent money to someone in Palestine. Neither of these arguments are persuasive. First, the Department argues that the facts surrounding Respondent's arrest demonstrate that she is a danger. Respondent attended a protest outside of Columbia University on April 30, 2024. Exh. 1-B at 11. She was cited for public disturbance, but the charges were dropped in the interest of justice. Exh. 1-B, Tab H. The police report states that she was with approximately 100 other people and was blocking the gate to keep anyone from entering or exiting. Exh. 3-B at 45. The Department provided no evidence that Respondent specifically threatened the police officers or was involved in any dangerous activity. Standing in a crowd of around 100 people in a protest does not show that she is a danger to the community.

Next, the Department argues that Respondent may have been providing support to terrorist organizations such as Hamas by sending money overseas. To support this claim, the Department submitted a Homeland Security Investigation (HSI) report stating that Respondent and another individual named [redacted] were involved in numerous transactions sending funds to individuals in the Palestinian Authority. Exh. 3-B at 4. The investigation stated that the most recent transaction Respondent initiated through Western Union was on February 25, 2025. *Id.* However, the report gives no details about how much money was sent, why the money was sent, nor the recipient of the funds. The Department also provided a list of MoneyGram transactions from Respondent's mother's address from March 5, 2018, to March 5, 2025. *Id.* at 32. Over these seven years, Respondent's name is listed only once, on March 13, 2022.[1] *Id.* at 35. Respondent claims that she was sending money to her relatives in Palestine. The Department admitted that they do not know any information about the person listed as the recipient of this transaction. There is no evidence in the record that this person supports Hamas or is a member of a terrorist organization. In the absence of evidence of any connection to terrorist organizations, the Court cannot find that Respondent is supporting a terrorist organization by sending money to a family member in Palestine.

[1] The Court notes that there are several MoneyGram transactions from [redacted] where Respondent resided with her family. Exh. 3-B, at 35-37. However, Respondent testified that her parents rent the second floor of the house, and the Department submitted no evidence to connect these transactions to Respondent or to a terrorist organization.

Respondent presented evidence of her good character, including letters from her family, friends, and school. *See* Exh. 1-B, Tabs J- M. She has been in the U.S. since 2016, and has not had any encounters with law enforcement other than at the protest in 2024. Thus, Respondent has met her burden to show that she is not a danger to the community, and the Department has not presented evidence to show otherwise. Upon careful consideration of the entire record, the Court concludes that Respondent is not a danger to the community. *See Guerra*, 24 I&N Dec. at 40.

The Court further finds Respondent is not a significant flight risk. Respondent entered the United States in 2016, and has remained in the U.S. since that time. She has lived with her mother in New Jersey since entering and plans to return to her mother's house after being released from detention. Respondent has family ties in the U.S., and specifically in the New York/New Jersey area. She lives with her U.S. citizen mother, stepfather, and brother, and testified that her sister often comes over to visit. Respondent also has a U.S. citizen aunt and uncle and multiple cousins in the U.S. *See* Exh. 1-B. Respondent submitted letters from her friends and family, attesting that she is a valued member of their community and an integral part of her family. Exh. 1-B, Tabs J-M. Respondent did not submit evidence of her family's ability to financially support her, but she testified that she has been employed as a waitress and was trying to start her own business before being detained. Further, her uncle testified that he and Respondent's mother own their own homes and that they will financially support Respondent. Finally, Respondent has multiple avenues for relief which incentivize her appearance at future hearings. Respondent's mother filed an I-130 petition on Respondent's behalf. Exh 1-B, Tab D. The I-130 was approved on May 5, 2021, and Respondent is waiting for her visa to become current. *Id.* Respondent is also *prima facie* eligible for asylum, withholding of removal, and protection under the Convention Against Torture. Exh. 1-B, Tab F. Considering all these factors, the Court concludes Respondent is likely to appear for future proceedings and is not a significant flight risk.

In sum, Respondent met her burden of demonstrating to the Court she is not a danger to the community, and the Department failed to provide evidence that shows otherwise. Further, the Court finds Respondent is not such a flight risk based on her family ties and eligibility for future relief that no bond is appropriate. Accordingly, the Court grants the Respondent's application for custody redetermination and sets her bond amount at $20,000.

Accordingly, the following order shall be entered:

ORDER

IT IS HEREBY ORDERED Respondent be **RELEASED** from custody of the Department upon the payment of a **$20,000 BOND**.

Dated: April 16, 2025

_____
Tara Naselow-Nahas
Assistant Chief Immigration Judge

Order of the Immigration Judge

Immigration Judge: NASELOW-NAHAS, TARA 04/16/2025

Certificate of Service

This document was served:
Via: [M] Mail | [P] Personal Service | [E] Electronic Service
To: [M] Noncitizen | [ ] Noncitizen c/o custodial officer | [E] Noncitizen atty/rep. | [E] DHS
Respondent Name : KORDIA, LEQAA | A-Number : [redacted]
Riders:

Date: 04/17/2025 By: French, Annette , Court Staff

TAB C

Allegations: [illegible] | Charges: Sustains All, by Court [illegible]
Designated Country: ISRAEL |

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

DOB: [redacted]

Event No: XNK2503000016

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: LEQAA KORDIA AKA: KORDIA, Leqaa M A currently residing at:

[redacted] [redacted]
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☒ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of STATELESS and a citizen of STATELESS;
3. You were admitted to the United States at Jamaica, New York on or about September 18, 2016 as a unknown manner;
4. You were granted a change of status to a F-1 non-immigrant student;
5. You were terminated by Bergen County Career Advancement Training, Inc. - BCCAT on January 26, 2022.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you failed to maintain or comply with the conditions of the nonimmigrant status under which you were admitted.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

27991 BUENA VISTA BLVD, LOS FRESNOS, TEXAS 78566. PRAIRIELAND DETENTION CTR
(Complete Address of Immigration Court, including Room Number, if any)

on May 6, 2025 *(Date)* at 8:30 am *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

E #6885 KLEIN - (a) SDDO
(Signature and Title of Issuing Officer)

Date: March 15, 2025

Dallas, Texas
(City and State)

EOIR — 12 of 35

Petitioner's Appendix Page 337

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

(Signature of Respondent)

_____ Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on March 15, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served)

K8224 GATES-JONES - Deportation Officer

(Signature and Title of officer)

EOIR = 33 of 35

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justica.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

Leqaa Kordia
[redacted]

PROOF OF SERVICE

On July 2, 2025, I caused a copy of this Emergency Discretionary Stay Motion in EOIR-43 Case and any attached pages to Sabrine Mohamad at the following address: PO Box 57089, New Orleans, LA 70157 by first-class mail.

_____
Carlos A. Rodriguez Jr.
Assistant Chief Counsel

EXHIBIT "14"

PETITIONER-PLAINTIFF, LEQAA KORDIA'S MOTION FOR PRELIMINARY INJUNCTION

Board of Immigration Appeals Order Granting Stay (July 3, 2025)

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Mohamad, Sabrine
Southern Poverty Law Center
Po Box 57089
New Orleans LA 70157

DHS/ICE OFFICE OF CHIEF COUNSEL - PEP
27991 BUENA VISTA BLVD
LOS FRESNOS TX 78566

Name: KORDIA, LEQAA **A** [redacted]

Date of this Notice: 7/3/2025

Enclosed is a copy of the Board's stay decision.

Sincerely,

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Paralegal

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Leqaa KORDIA, A[redacted]

Respondent

FILED
Jul 03, 2025

ON BEHALF OF RESPONDENT: Sabrine Mohamad, Esquire

ON BEHALF OF DHS: Anastasia S. Norcross, Assistant Chief Counsel

IN BOND PROCEEDINGS
On Motion for Stay of Removal before the Board of Immigration Appeals

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

STAY ORDER

The Department of Homeland Security has filed a motion for an emergency stay of the Immigration Judge's bond order, issued on April 3, 2025, ordering the respondent released from custody upon posting a bond of $20,000. After consideration of all information, the Board has concluded that the motion for emergency stay of the bond order will be granted.

ORDER: The motion for stay of execution of the bond order is granted.

EXHIBIT "15"

PETITIONER-PLAINTIFF, LEQAA KORDIA'S MOTION FOR PRELIMINARY INJUNCTION

June 20, 2025 Hearing Transcript, Khalil v. Joyce*, 2:25-cv-1963 (D.N.J.)*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Plaintiff,

vs.

Deputy Director William P. Joyce, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement, et al.,

Defendants.

CIVIL ACTION NUMBER:

2:25-cv-1963-MEF

Oral Argument

Frank R. Lautenberg Post Office and Courthouse
Two Federal Square
Newark, New Jersey 07102
June 20, 2025

B E F O R E: **THE HONORABLE MICHAEL E. FARBIARZ, UNITED STATES DISTRICT COURT JUDGE**

A P P E A R A N C E S:

IMMIGRATION RIGHTS CLINIC, BY:
ALINA DAS, ESQ.
NYU School of Law
245 Sullivan Street
5th Floor
New York, New York 10012

appeared on behalf of Petitioner;

Lisa Larsen, RPR, RMR, CRR, FCRR
Official Court Reporter
Lisa_Larsen@njd.uscourts.gov
(973)776-7741

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

A P P E A R A N C E S: (Cont'd.)

UNITED STATES DEPARTMENT OF JUSTICE, BY:
BY: DHRUMAN Y. SAMPAT, SENIOR LITIGATION COUNSEL
SARAH S. WILSON, ASST. DIRECTOR
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

appeared on behalf of Respondents; and

A L S O P R E S E N T:

Amy Greer
Amy Belsher
Veronica Salama
Robert Hodgson
Omar Jadwat
Esha Bhandari
Noor Zafar
Brian Hauss
Brett Kaufman
Baher Azmy
Samah Sisay
Naz Ahmad
Ramzi Kassem
Mudassar Toppa
Diala Shamas
Marc Van Der Hout
Johhny Sinodis
Oona Cahill
Jeanne LoCicero
Liza Weisberg

(PROCEEDINGS held via Teams before the HONORABLE MICHAEL E. FARBIARZ, United States District Court Judge, on June 20, 2025.)

THE COURT: Good afternoon. This is Judge Farbiarz.

I'll ask will the courtroom deputy please confirm that the court reporter is on the line.

THE DEPUTY CLERK: Good afternoon, Judge. Yes, Lisa Larsen is on the Teams conference.

THE COURT: Thanks very much.

We are here for *Khalil v. Trump, et al.*

I want to go around the horn and get appearances but, given the number of lawyers I know who have appeared on this case, I'm gonna do what I did last time, which is I'm simply going to ask the lawyer or lawyers who expect to speak to the pending motion to introduce just themselves and we'll take it from there.

First, the lawyer or lawyers who will be appearing -- rather, speaking today, for the petitioner.

MS. DAS: Good afternoon, Your Honor. This is Alina Das from the NYU Immigrant Rights Clinic, Washington Square Legal Services. I'll be arguing on behalf of the petitioner today.

THE COURT: Ms. Das, good afternoon to you.

And for the respondents.

MR. SAMPAT: Good afternoon, Your Honor. Dhruman

Sampat and I'll be arguing on behalf of the respondents today.

THE COURT: Good afternoon to you.

What I'll ask you to do, the lawyer for the petitioner and also the lawyer for the respondent, just so the record is complete, could I ask you to please at the end of today's proceeding file a very simple one-sentence letter that indicates all of your colleagues who are on the phone so we have a full and complete record of everybody who has appeared.

Can I ask you to do that, please.

MS. DAS: Yes, Your Honor.

MR. SAMPAT: Of course, Your Honor.

THE COURT: Thanks a lot. I appreciate it.

I want to start out -- let's just start out for half a moment as to where we are. Motion for -- a letter with respect to bail and release was filed on Monday from petitioner, including a short letter brief, the respondents responded on Tuesday, the petitioner filed his response on Wednesday, yesterday was of course a court holiday, and today, Friday noon, we are here for oral argument with respect to the motion for bail or for release. That's where we are.

In the interest of saving us some time, I want to address at the outset an argument that was made by the respondents that I don't find persuasive. I want to just explain my reasons so that we not invest our time on it.

The respondents essentially argue, among other things,

that the petitioners have simply made what functions as a motion for reconsideration of my Friday decision, which is to say my decision of seven days ago.

I think that's simply not right. What happened a week ago, a week ago today, is that as of 9:30 in the morning I preliminarily enjoined certain things, detention as to and efforts to remove as to the Secretary of State's determination as to the petitioner here.

An hour or so later the petitioner filed a letter saying, given the Court's decision as to the Secretary of State's determination, the petitioner needed to be released on the other ground he was held.

That is simply not persuasive, and it's not persuasive because the fact that a person cannot be held or removed on one charge simply does not logically imply that he or she cannot be held or removed on another charge.

If this were a criminal case, which it's of course not, the court held that a person -- a charge of theft could not go forward. That would not imply that the other charge in the case, pretend it's robbery, could not go forward. That doesn't follow logically.

As of Friday, that was the only argument that the petitioner had made, as I understood it, and as I do understand it now.

Over the weekend the petitioner apparently developed

and on Monday filed a different argument. That argument is not that the preliminarily enjoining of the Secretary of State's determination charge, that that preliminary enjoining implied logically that another charge could not go forward; rather, it's a different argument.

The Monday argument is that the remaining charge is one as to which the petitioner is entitled to either release or removal -- excuse me, release or -- not "removal," forgive me, release or transfer to this district.

So they're just simply different things. The Friday argument was that there is a logical reason why enjoining Charge A requires not going forward on Charge B. That's not logical.

The argument made Monday and the one we are here principally to discuss, the argument as to bail, is an argument simply that as to Charge B there is a request for bail the petitioner.

I do not understand the petitioner to be making a motion for reconsideration. I think that's a misunderstanding of the argument that was pressed by the petitioner last week and a misunderstanding of the decision I made on Friday.

So I wanted to say all that at the outset, Mr. Sampat, so we don't spend any time on it because I don't view it as a meaningful -- not that it's not meaningful but it's just an argument that I don't think is persuasive. So I wanted to say

that from the outset.

I'll ask Ms. Das if I could just get an update from you as to where things stand in terms of the process of seeking bail in front of the immigration judge.

MS. DAS: Yes, Your Honor, and thank you.

So on Friday, as you know, immigration counsel sought release directly from the DHS. That was denied on Monday. On Tuesday immigration counsel filed a motion for a bond hearing with the immigration judge.

As of this morning or just before this hearing, we have not heard back as to whether that bond hearing has been scheduled. In addition, Mr. Van Der Hout had also asked DHS on Friday if it would direct the immigration judge to this Court's opinion and indicate that it would be withdrawing or dismissing that charge so that the case could move forward.

As far as we know, there has not been a filing from DHS to the immigration judge about that matter, either.

THE COURT: Can you explain a little bit -- I understood from Exhibit C to your Wednesday filing, Ms. Das, that Mr. Van Der Hout, who I believe is the immigration counsel you alluded to, that Mr. Van Der Hout was seeking an immigration judge proceeding as soon as this coming Monday.

So, first, I hear you to be saying that that has not yet been scheduled.

Do I have that right?

MS. DAS: That's right, Your Honor.

THE COURT: What was the second point, if you could just slow it down a bit and explain that a little more fully.

MS. DAS: Absolutely, Your Honor.

In the same letter to -- the e-mail to the Department of Homeland Security where Mr. Van Der Hout attached the request for release directly to DHS, there was also a request to DHS that they indicate to the immigration court that they will be dismissing or withdrawing the foreign policy ground or otherwise not relying on it, given this Court's order.

In our view, that would facilitate the bond hearing for the Government to actually be conveying to the immigration judge that it can go forward on the bond hearing. Of course Mr. Van Der Hout has also given the court ruling to the immigration court and has sought reconsideration of her prior determination directly, just to cover all bases; but I just wanted to indicate that as far as we know we're not aware of DHS submitting any filings with respect to our request for bond to the immigration judge or any filings related to the foreign policy ground.

THE COURT: Right. But what I'm just not fully understanding is why it matters. It sounds like the petitioner has himself conveyed to the immigration judge that the charge that rests on the Secretary of State's determination has been preliminarily enjoined.

What difference does it make if DHS also says something about that to the immigration judge?

MS. DAS: Your Honor, it may not make a difference. It's certainly our position that the immigration judge should grant a motion for a bond hearing and hold that bond hearing as quickly as possible; but in our experience in litigating these issues, the immigration judge generally does like to hear from both sides, and so that's why we suggested it.

THE COURT: That makes sense. I wondered if there was something else I was missing, but I do appreciate how that makes sense.

One other -- Mr. Sampat, is there anything about what Ms. Das just said that is inaccurate, from your perspective?

Mr. Sampat, we don't hear you, if you're speaking.

MR. SAMPAT: Sorry, Your Honor. I was muted and I lost Your Honor's questions when I was trying to un-mute. I apologize.

THE COURT: Not at all. No worries.

Is there anything in what Ms. Das said that is inaccurate, from your perspective?

MR. SAMPAT: Not that I know of. I will say that from my understanding the bond hearing -- I agree with Ms. Das that the bond hearing has not yet been scheduled in front of the immigration judge, but I can represent that they are usually

scheduled pretty quickly. So if it's not scheduled for this upcoming Monday, as per Mr. Khalil's request, we anticipate it should be scheduled pretty soon.

THE COURT: Okay. All right. I appreciate that.

Ms. Das, I'm going to come back to you for half a moment.

Do you have an understanding as to what your expectation is as to how an immigration judge detention hearing would go, which is to say, live witnesses, a decision in one day?

What is your expectation based on experience with this particular judge in general, et cetera?

MS. DAS: Yes, Your Honor.

So it can go in different ways, so it's not precisely clear. But as a general matter, when an immigration judge receives a request to schedule a bond hearing, the immigration judge will typically set a date for that hearing.

The parties are generally given the opportunity to submit bond submissions. In a bond hearing the immigration judge would put the burden on the non-citizen respondent to demonstrate lack of flight risk and danger, and in addition to written submissions to that effect the immigration judge would typically take testimony at a bond hearing, although there are occasions where they will simply rely on argumentation from both sides.

In the typical case, an immigration judge would rule on bond on that day, but there are instances where a judge will reserve decision and take some time to issue a decision on bond.

As we noted in our papers, what we have seen most recently with respect to students in particular engaged in political speech is that the Government has been filing an automatic stay. If they file an appeal of the bond decision within one day of the decision, they receive an automatic stay where the bond decision would not be implemented while the Department of Homeland Security pursued an appeal to the Board of Immigration appeals which is a process that typically takes months to resolve.

THE COURT: Mr. Sampat, do the respondents have a position as to what they would do with respect to the referenced automatic stay if an immigration judge granted release here?

MR. SAMPAT: No, Your Honor, we don't have a position because we think it's speculative at this moment. We still don't know what the immigration judge is gonna do.

THE COURT: All right. I got it.

Mr. Sampat, just to round it out, anything that Ms. Das said that strikes you as inaccurate in terms of characterization of the process?

MR. SAMPAT: No. The only note that I had was noting

that sometimes bond decisions can be reserved, but Ms. Das said that so I think we're good on our end.

THE COURT: Thanks very much.

This is the petitioner's motion, so ordinarily I'd have the petitioner go first in terms of argument, but the respondents here have a number of threshold issues that they press.

The first and most important is, as always, jurisdiction, not most important but necessarily first, which is to say an argument under 1226(e). There's also an argument about exhaustion.

Mr. Sampat, I wanted to hear you out on one or both of those arguments at the outset. Why don't you just give me a few moments on your position now.

MR. SAMPAT: Of course, Your Honor.

Understanding that we're not gonna talk about the motion for reconsideration, so on the 1226(e), Your Honor --

THE COURT: Mr. Sampat, let me stop you for a second. There is no motion for reconsideration. My point was that I do not view what was filed by the petitioner on Monday as a motion to reconsider my Friday decision. I view it as just simply a separate motion that progresses a different theory.

The Friday theory was, in my judgment, not persuasive because, as I said, analogically, not being able to go forward on theft does not mean that somebody cannot go forward on

robbery. Those are simply separate.

This is a different argument, so I just want to be crystal clear, Mr. Sampat, my point is that I do not view the Monday motion by the petitioner as a motion for reconsideration.

With that, back to you.

MR. SAMPAT: I appreciate that, Your Honor. I was only characterizing what our position was in our papers. Understood.

On 1226(e), Your Honor, we think the text is pretty clear. It sets forth that the Attorney General's discretionary judgment regarding the application of this section shall not be subject to review and that no court may set aside an action or decision under this section regarding the detention of any alien.

Mr. Khalil is currently detained pursuant to 1226(a) in light of the fraud and willful misrepresentation charge. Congress has authorized the executive to detain aliens if they're deemed removable or inadmissible. That decision is not subject for review and a court order requiring release would offend 1226(e).

We think that the Third Circuit's decision in *Borbot v. The Warden* at 906 F.3d 274 says exactly that. So we think the release request is actually foreclosed by Third Circuit law, as well.

THE COURT: Here is the thing I don't get about that:

You briefed that argument without saying anything about the Supreme Court's decision in *St. Cyr* in 2001 or the Supreme Court's decision in *Demore* in 2003.

As you know, those decisions stand for the proposition -- well, step back. As we know from *Colorado River* and many other cases, federal courts have a, quote, unquote, virtually unflagging obligation to exercise their jurisdiction.

United States Congress has given the court habeas jurisdiction. The Supreme Court in *St. Cyr* said that jurisdiction stripping or habeas jurisdiction stripping in the immigration context has to be extraordinarily clear.

The Supreme Court said in *St. Cyr* that jurisdiction was not stripped as to a passage that was headed "elimination of custody review by habeas corpus." That's what Congress had written, and the Supreme Court said it wasn't clear enough.

Then in 2003 in *Demore,* Chief Justice Rehnquist says that as to 1226(e), which is the portion of the statute that you're invoking, that it, quote, contains no explicit provision barring habeas review.

So what I don't fundamentally understand is how it can be that the Supreme Court has said in general as to the immigration statute and in particular as to this portion of the immigration statute that it's not clear enough to vitiate

habeas and -- to eliminate habeas jurisdiction and yet you're arguing here today that 1226(e) does strip away habeas jurisdiction.

How do those live together?

MR. SAMPAT: So, Your Honor, to take Your Honor's points in turn, *St. Cyr* pre-dated the REAL ID Act which obviously curtails federal court's habeas jurisdiction moving forward where removal orders were now channeled through the petition for review process.

Demore talks about 1226(e), but I think it's important to note that *Borbot* post-dates all of those decisions. And the Third Circuit was clear on -- that a challenge to a particular action or decision to detain would be barred under 1226(a).

THE COURT: I don't think any of that is right. I think the problem you have is that there is a longstanding idea -- well, let's step back for half a moment.

The fact that *St. Cyr* pre-dates the REAL ID I think cuts strongly against your position because what it suggests is that Congress was well aware of the requisite level of specificity that it required if it was gonna strip habeas jurisdiction and 1226(e) is not particularly specific.

There are circuit courts all over the country -- Second, Ninth, the Fifth, the Seventh -- all of whom have held that 1226(e) does not bar the exercise of habeas jurisdiction.

I'll just say the names of those cases so we have them. The Second Circuit is *Ozturk*, O-Z-T-U-R-K. The Ninth Circuit is *Martinez*, citing the *Singh* case, S-I-N-G-H. The Fifth Circuit is *Najera*, N-A-J-E-R-A, and the Seventh Circuit is *Al-Siddiqui*, which I think is an especially helpful case, A-L, dash, S-I-D-D-I-Q-U-I, all of which emphasizes that *Demore* has a clear -- that *St. Cyr* requires a clear statement. *Demore* makes it clear that there's no clear statement in 1226(e) so there's no stripping of habeas jurisdiction.

And to close it out, federal courts have held for -- since the 19th century that one of the incidents of habeas jurisdiction is the ability to grant or not grant bail pending resolution of a habeas case.

You cited in your March filing the Third Circuit's *Johnston* decision on that from the '50s. The Second Circuit's *Mapp v. Reno* case collects decisions way back to the 19th century.

I have Judge Posner -- I scribbled a note to myself -- from 2007 for the Second Circuit talking about the possibility of bail in the habeas context being a, quote, natural incident, end quote, of habeas jurisdiction.

So I think the problem you have fundamentally, Mr. Sampat, is that over and over again the circuit courts of the United States have held that there's insufficient clarity in 1226(e) under *St. Cyr* to strip habeas jurisdiction, and a

core aspect of habeas jurisdiction -- in the Third Circuit, *Lucas*, *Landano*, *Johnston* -- throughout the United States a core incident of habeas jurisdiction is the possibility of admitting somebody into bail.

So I don't see 1226(e) as being clear enough under *Demore* to strip habeas jurisdiction; and if it does not strip habeas jurisdiction, 1226(e) does not strip one of the basic incidents of habeas jurisdiction, which is the ability of a federal court to grant someone bail in advance of a final decision as to the habeas claim.

Anything else you want to add on this, Mr. Sampat?

MR. SAMPAT: Yeah, Your Honor. Yes, Your Honor. Just on the *Demore* point.

THE COURT: Sure.

MR. SAMPAT: I very quickly pulled it up, and it seems like the Court's reasoning on 1226(e) was that because Mr. Kim there was not challenging the individual judgment or decision to detain, that it was rather challenging the statutory framework --

THE COURT: Mr. Sampat, Mr. Sampat, this is what happens when you pull things up during oral argument.

There's a reason I cited you to *Al-Siddiqui* out of the Seventh Circuit in particular. It makes it crystal clear that there are -- it is true that in *Demore* itself that was the issue, but, number one, Chief Justice Rehnquist said -- this

is why I quoted this particular line that, quote, Section 1226(e) contains no explicit provision barring habeas review.

Under *St. Cyr* that is dispositive, whether the case is one that challenges a regulation or challenges something as applied.

That's number one.

Number two, that's why the *Al-Siddiqui* case out of the Seventh Circuit matters. It collects a number of cases that emphasize that *Demore's* holding is controlling regardless of the nature of the challenge.

Now, there are gonna be some outer limits aspects to that, but the problem is Congress needs to speak clearly. And having not spoken clearly, that is, under the cases I have cited, even under Chief Justice Rehnquist's quote that I read to you from the Supreme Court, that's in my judgment the end of the matter.

Anything else, Mr. Sampat?

MR. SAMPAT: Not on that, Your Honor. I think we have exhausted our arguments on 1226.

THE COURT: Fair enough.

I do not view 1226(e) as a jurisdictional bar here to admitting or not admitting the petition to bail.

What's the exhaustion argument? Is that an argument you're making, Mr. Sampat, that there's administrative

exhaustion? What's your position on that?

MR. SAMPAT: So, Your Honor, our position is that as a prudential matter it makes for sense for Mr. Khalil to avail himself at the administrative process and to avoid conflicting decisions between this Court and the immigration judge.

He's currently -- as we know, he has filed for a motion of custody re-determination before the immigration Judge. He's availing himself to those processes. It makes more sense for him to go through that process right now than it is for Your Honor to weigh in.

THE COURT: Okay. What is the -- that argument proves very little in the sense that it says nothing about why I should wait for the immigration judge versus why the immigration judge should wait for me.

What is the argument for why I should wait for the immigration judge?

MR. SAMPAT: Well, Your Honor, it goes back to some of the cases that we have cited in our briefs where judges within the district have said that they won't exercise habeas jurisdiction or won't review claims absent a petitioner exhausting administrative remedy.

I'll also point Your Honor to a decision that just came out a few days ago out of the Southern District of New York. The name of the case is *Guzman vs. Joyce*, which can be found at 2025 Westlaw 1696891.

That case, Your Honor, discusses and supports the fact that exhaustion is an important part of this process before a party was to run into federal court because if the issue can be resolved administratively it is better for -- it's a better course of action than expending judicial resources here.

THE COURT: I hear that, but I think it's a -- look, you invoke in your papers and you invoked at the outset of what you just said two District of New Jersey cases. There's the opinion from Judge McNulty and there's the opinion from Judge Wigenton.

I think the problem you have is that both of those cases rely on *DeValle* and *Yi*, which are Third Circuit cases that say that administrative exhaustion is jurisdiction. But of course -- and I'm honestly surprised that nobody brings these cases to my attention in these papers, but such is life. It's the same issue I have with *Demore*. Again, nobody brings this up.

In 2023 the Supreme Court held, as we all know, that the exhaustion provisions such as they are of 8 U.S.C. 1252(d)(1), that those exhaustion provisions are not jurisdiction.

And so the cases, Mr. Sampat, you're citing are -- they just look a whole lot different. They are based on a Third Circuit conception that administrative exhaustion is jurisdiction; but after those district court decisions came

down, the United States Supreme Court explicitly held in 2023 that 1252(d)(1) is not jurisdiction.

Instead, the conclusion from the Supreme Court is that there is, if anything, some kind of common law exhaustion required. I don't know if that common law exhaustion is in play here or not.

The Third Circuit in *DeValle* suggested that 1252(d)(1) requires exhaustion, even in the context of something that long pre-dates review of a final order. One can look at that in many different ways, and one can look at that as surviving or not surviving the Supreme Court's decision in *Santos-Zacaria* of 2023.

But assuming arguendo Santos-Zacaria applies here, then exhaustion is only a prudential issue, which is how you started off, Mr. Sampat.

First, let me just say I'm not sure under *DeValle* that there is a need for prudential exhaustion before the entry -- before the entry of an order of final removal. I don't know the answer to that.

But even assuming arguendo that there is some need for that kind of exhaustion, all of the factors that Justice Jackson for the Supreme Court in *Santos-Zacaria* pointed out, all of those factors weigh heavily in the direction of me taking this issue on.

Supreme Court Justice Jackson speaks about the, quote,

unquote, orderly progression of the litigation. Here there are bail arguments that have been made in front of me. There has not even been a scheduled bail hearing in front of the immigration judge so it's hard to know why orderly progression does not cut in favor of me simply resolving the issue.

The Supreme Court in *Santos-Zacaria* invokes efficiency, it invokes, quote, unquote, waste of work. That would seem to cut in favor of me resolving the issue here as well.

There's been many, many, many pieces of evidence filed. There has been a great deal of litigation on this particular issue.

Hard to know why at this stage it's more efficient in terms of the judicial resources you alluded to, Mr. Sampat, for me not to just take the case and resolve it myself.

Finally, there is something of a futility reason to avoid exhaustion. I have to say that with respect to that there is a very strong and uncontested record here as to lack of flight risk and lack of dangerousness.

Given that strong and uncontested record, it becomes hard to know what the reason, other than waste of time, is to send this to an immigration judge who will look at those same two factors under C.F.R. 1003.19(h)(3) and will come to what I imagine is a pretty obvious solution.

I think the New Jersey cases you cite rest on Third Circuit decisions that themselves treat exhaustion as

jurisdiction. The Supreme Court in 2023 made crystal clear that exhaustion is not jurisdictional.

To the extent that exhaustion is required, in contexts like this one it is required as a prudential matter; and if it is required, if it is required as a prudential matter, for all the reasons I have just mentioned, I don't understand why it would be required here under the factors set out in *Santos-Zacaria* in 2023.

So it's a prudential matter, it's a discretionary matter, and I will not exercise my discretion to avoid this decision, given where things are postured.

Mr. Sampat, anything else you want to add on exhaustion?

MR. SAMPAT: Nothing else, Your Honor.

THE COURT: Mr. Sampat, I'm going to keep sticking with you because a lot of the preliminary things run through arguments the respondents have made.

The standard here with respect to bail, I want to understand where you're coming from on this.

MR. SAMPAT: On the extraordinary circumstances standard, Your Honor?

THE COURT: Yeah, what the key case is and what the substantive standard that that case or cases stands for.

MR. SAMPAT: Yes, Your Honor.

So *Landano* sets forth the extraordinary circumstances

standard, and we think that means, you know, it is something in the form of severe health complication or something that would be irreparable in a case where an individual would not -- further delay would severely prejudice a petitioner.

We don't have that here. Mr. Khalil, again, is before an immigration judge, is receiving his due process. If he's released, his case would be transferred to the non-detained docket, so those proceedings would remain ongoing.

It's a pretty high burden, and we don't think Mr. Khalil has made it. We think a lot of that is rooted in our March 23rd filing on the opposition for his motion for release.

THE COURT: Why do you think *Landano* provides the standard? Let me step back even further.

What is the standard that you view as the one that you've made?

MR. SAMPAT: I'm sorry, Your Honor. Give me one moment.

THE COURT: Let me explain to you why I'm asking the question.

In your March 23rd filing you just alluded to, at page 17 you indicate that the standard that needs meeting here is what you described as the *Landano* standard, and you say that it is, quote, unquote, conjunctive, that there needs to be a showing of both high probability of success on

substantial claims and extraordinary circumstances.

I'm not sure -- is that your position today, or do you have a different position?

MR. SAMPAT: No, that is our position today. That is a -- it is a conjunctive standard, Your Honor.

THE COURT: So in other words, your judgment is that there needs to be a showing of extraordinary circumstances, whatever that means, plus there needs to be a high probability -- let's pretend that's 51 percent -- of winning on a substantial claim. Is that --

MR. SAMPAT: Yes.

THE COURT: I'm not sure I understand how you get that out of the case. I think the problem you have with that is to make that argument you pin cite to a particular page in *Landano* but that particular page in *Landano* is simply reciting the standard set out by the Fifth Circuit circuit.

And a couple paragraphs later the circuit says, well, gee, we, the Third Circuit, have set out a standard in *Lucas* previously. And the *Lucas* standard is not conjunctive. The *Lucas* standard does not say something about high probability and also extraordinary circumstances. The *Lucas* standard simply says extraordinary circumstances.

So I'm not sure why the *Landano* court's simple citation -- the *Landano* court literally says this is how other courts have done it and then cites the Fifth Circuit's

conjunctive standard but then two paragraphs later has what I take to be a contrast with its own pre-*Landano* statement in *Lucas* which is simply about extraordinary circumstances, not about the merits.

I'm not sure why I read *Landano* as displacing by mere citation to the Fifth Circuit the Third Circuit's *Lucas* position.

MR. SAMPAT: Your Honor, so we cited -- there are a couple cases that we cited in our March 23rd filing where courts within the circuit have used it as a conjunctive standard. That's in *Ingram* where the court denied bail after a state prisoner failed to establish both prongs.

There's also the *Hudler* case out of the Middle District of Pennsylvania where it was denied. I'm sorry, Your Honor. I don't mean to --

THE COURT: No, no, no, go on.

MR. SAMPAT: Sure.

So *Hudler* was denied on the basis that petitioner had failed to establish a substantial constitutional claim. I will also note that when we briefed the release motion back in March, the fraud and willful misrepresentation charge wasn't before the Court or had not been briefed in the PI or in the operative pleadings that were tethered to the motion, so we haven't had a chance to actually brief it.

We don't think it's necessary because at the end of the

day we think this is a discretionary decision obviously, but this is just a separate independent charge that continues to justify Mr. Khalil's detention today.

THE COURT: What I would say that -- I read all the district court opinions you cited and they're thoughtful, of course. They're my colleagues throughout the circuit thinking this through very carefully, no doubt about it.

It's just that when I read *Landano*, I do not see a Third Circuit adapting the Fifth Circuit's conjunctive two-part test. In fact, I see it as very explicitly drawing a contrast with the Third Circuit's own *Lucas* test, which is simply focused on extraordinary circumstances.

I think that -- so I think that my own judgment is that what governs here is the *Lucas* standard, not the *Landano* standard. The thing that's a little complicated is what extraordinary circumstances mean. And I appreciate that the Second Circuit in *Mapp v. Reno* has said that extraordinary circumstances means something like circumstances so extraordinary that the habeas writ would be ineffective if bail were not granted.

But I don't see that in the Third Circuit's binding *Lucas* decision. I don't see the extraordinary circumstances are limited to that qualification.

I'll go even further. The *Mapp v. Reno* decision is itself based on an older Second Circuit decision, two of them.

One of them is *Iuteri*, I-U-T-E-R-I. And that seems like one of the cases that *Lucas* explicitly walked away from.

So I'm left with two complexities in terms of the standard here. First, I think *Lucas* controls and not *Landano*. I appreciate that many colleagues or some colleagues in the Third Circuit, other district judges, have seen it perhaps differently; but I think the most faithful read of the circuit's precedence is that *Lucas* controls.

I am left with two issues. The first is extraordinary circumstances as to what? *Mapp v. Reno* or the Second Circuit based on *Iuteri* says that it's extraordinary circumstances that are specifically tied to the efficacy of a later habeas remedy, but the Third Circuit did not say that in *Lucas* and has not said that in its case law, so far as I have been able to see it.

In addition, and I think this is quite important, *Mapp v. Reno* requires some showing of meatiness to the underlying claim. It doesn't seem like *Lucas* requires that.

Now, if *Landano* was the law in the Third Circuit, there would need to be some kind of, quote, unquote, high probability showing, but I don't think *Landano* is the law. I think *Lucas* is the law.

Under *Lucas*, what I take away is the extraordinary circumstances do not need to be focused on the preservation of the habeas remedy. The Third Circuit in *Lucas* left open a

broader remit for federal judges considering bail to simply assess extraordinary circumstances and all of the possible permutations that might arise, and the *Lucas* court did not seem to take the step that the Second Circuit did. That is to say the *Lucas* court did not seem to require that there be some showing of likelihood of success on the merits or some showing of even a substantial claim on the merits.

So my judgment is *Lucas* controls here and that *Lucas* has a very broad idea of extraordinary circumstances, not one tethered, as in *Mapp v. Reno*, to the efficacy or non-efficacy of the habeas remedy. And at least within its four corners *Lucas* does not seem to require any sort of showing that there is a kind of level of strength in the underlying claims.

I'll note two other things about *Lucas*. First of all, it seems to me that the Third Circuit almost surely takes the view -- would take the view, excuse me, that the standard set out for bail in habeas criminal cases is higher than the standard that would apply here, and that's in part based on a simple a fortiori assessment, which is that in a criminal context somebody has, by hypothesis, been convicted with all the guarantees that the Constitution implies. And there are in the state criminal context imported federalism issues.

None of that is present of course in the immigration context. There are not criminal protections, there is not a criminal judgment, and there are not federalism issues.

The a fortiori, by that I mean whatever the standard for release is, in criminal habeas is higher than the standard for release in immigration habeas.

The buttress for that a fortiori argument is what the Third Circuit in *Landano* cites, which is Justice Douglas's opinion *in Aronson*, his in-Chambers opinion in 1964.

I'll also note that *Landano* and *Lucas* seem hesitant about the idea of tying the standard of -- for granting bail in the habeas context. They seem hesitant about tying it to the substantive likelihood of success.

One of the things that is said in one of those cases is exhaustion doesn't generally turn on whether you have a good claim or not, which is really what we're talking about here.

So, bottom line, I think the *Lucas* standard controls, not *Landano*. I think the *Lucas* standard under the reasoning of Justice Douglas as cited in *Landano* is almost surely higher than the standard that is in play here.

The *Lucas* standard is about extraordinary circumstances. Period. Full stop. The *Lucas* standard is not about extraordinary circumstances related to ultimate efficacy of a habeas decision. That's the Second Circuit's perspective but it's not what *Lucas* says.

Finally, *Lucas* is not about the strength of the underlying claim. That is *Iuteri* out of the Second Circuit, that is *Mapp* out of the Second Circuit, but that is not what

the Third Circuit said in *Lucas*. And of course it's my job to faithfully apply the standard set out by the circuit and not to subtract from them and not to add to them. That's where I stand on the standard.

Mr. Sampat, do you have anything you want to add on any of this?

MR. SAMPAT: Yes, Your Honor, if I may, understanding Your Honor's point that you believe that *Lucas* is the standard and not *Landano*.

THE COURT: Right, right.

MR. SAMPAT: I think it's important to note that if *Lucas* is the standard, anyone would be able to just file a habeas petition and just say their case is different, it's special enough, there's extraordinary circumstances, and that standard is met.

I think *Landano* was meant to say that it needs to be tethered to the underlying claims that's raised in the petition itself. It makes logical sense for -- we think that it makes logical sense to read *Landano* that way because at the end of the day release pending habeas review is, in effect, sort of an injunctive relief.

There needs to be some sort of showing that there's a likelihood of success on the merits before we go forward and before release actually results. What the Third Circuit has said repeatedly is an exceptional form of relief of release on

bail pending habeas.

THE COURT: I hear all that, but my responses are twofold. First, maybe the Third Circuit should have articulated a different standard, but that's ultimately not my job. My job is to faithfully follow the circuit's standard as I understand it.

The second point I would make is extraordinary circumstances is a pretty high standard. It is certainly the case that litigants all over the country can make any claim they want, but the fact that claims are makeable doesn't mean that claims win, and extraordinary circumstances sets a pretty high bar.

The third problem with what you've said about the idea that bail pending a determination is analogous to an injunctive remedy and therefore a likelihood of success is necessary, there are a bunch of problems with that. I'll take two.

Problem one is that the Third Circuit -- forgive me for not recalling if it's in *Landano* or *Lucas*, I think it's in *Landano* -- has explicitly said no to that, has explicitly said we don't think of likelihood of success on the merits as the key issue.

The second thing is, the only circuit court that has specifically addressed the question of bail in the habeas context, which is to say the Second Circuit in *Mapp v. Reno*,

the only modern circuit that's done it, they too have not followed what you suggested.

They haven't required a likelihood of success on the merits. They have required something quite a bit lower. They have required something like a substantial claim. I'm quoting, I think, there.

So, maybe, but that's just not the state of the law, and it's the state of the law as it stands today that I'm bound to apply here.

The other problem I think you have to deal with is the a fortiori point that I alluded to earlier and that is central to *Landano*'s citation of Justice Douglas, which is that if the standard doesn't include -- and it doesn't, the *Lucas* standard does not include likelihood of success on the merits in a criminal case, why would we imagine a higher standard in an immigration case?

Indeed the logic -- not the implicit logic but the explicit logic of *Landano* would seem to be that immigration is a lower standard because, by hypothesis, nobody has received the very strict protections associated with a criminal conviction, including the full range of constitutional rights that are triggered there.

So, ultimately, I'm not persuaded by what you're saying on that point, Mr. Sampat, but I appreciate it.

Anything else you want to add?

MR. SAMPAT: No, Your Honor. Thank you.

THE COURT: Thank you.

So those were a whole bunch of preliminary issues, and they are complicated in this case in part for a reason that Mr. Sampat alluded to. These are -- extraordinary circumstances a high standard, it's hard to meet, and there are simply not a lot of cases in this area, in part because it's hard to meet and in part because generally this sort of litigation goes forward not in a federal district court but in front of an immigration judge.

Ms. Das, I haven't heard from you. We're now at the merits of your argument with respect to release. I won't ask you to repeat everything you've said in your papers, but I'd like to hear from you on the extraordinary circumstances argument, anything else you want to say, and then I'll ask Mr. Sampat to be heard as well at that point.

MS. DAS: Thank you, Your Honor.

Yes, we certainly are able to address the extraordinary circumstances, which we would essentially put into three buckets at this point.

One is certainly the fact that this is a First Amendment case, and the Government's most recent actions underscore our First Amendment concerns, which I will address in a moment. The other, as you've already noted, is that this is a case where there is extensive evidence in the record,

much of which goes to flight risk and danger, and that's evidence that the Government has not controverted.

Finally, there's a whole set of harms related to what this has meant to Mr. Khalil and his family and the prejudice that further delay would cause him.

Taking the first point on the First Amendment issues first, certainly for more than three months the Government has relied on a rarely used and unconstitutionally vague foreign policy ground to justify its detention of Mr. Khalil.

When this Court enjoined that detention and removal on that ground, ICE made the extraordinary decision this past Friday not to release Mr. Khalil as it would in an ordinary case but now to detain him on the basis of the separate immigration application charge, a charge that the evidence we presented already shows is rarely, if ever, used as a basis to detain lawful permanent residents like Mr. Khalil.

So the Government's latest actions confirm what we have alleged in this petition all along that retaliatory detention is the Government's goal, that the purpose of every step that the Government has taken in this case has been to ensure that Mr. Khalil remains locked away until he is deported as retaliation and punishment for his speech and viewpoint.

So at this stage of the case the Court does have the power and the sufficient evidentiary record to grant bail in light of that extraordinary circumstance. His petition has

been verified. He submitted extensive evidence of the Government's own statements about his protected political speech, the timing and baselessness of these characterizations, and the extraordinary irregularity of the Government's latest justification for his detention.

It's clear that this case is core about detention. It is a rare case where there's actually direct evidence of First Amendment retaliation from day one. The Government's own statements and their supplemental charging document make explicit that they have been targeting Mr. Khalil from the start based on his speech and viewpoint.

This Court has made findings with respect to the fact that Mr. Khalil has engaged in protected speech and the fact that the Government has now swapped in what we would argue to be an even weaker justification for his continuing detention, because this Court's injunction has forced them to do so, doesn't break that causal chain. If anything, it strengthens it.

THE COURT: May I ask you something on that for the moment?

MS. DAS: Yes.

THE COURT: There are two charges here and one of them has been enjoined. The second charge was not filed last Friday. It was filed many months ago. So I'm a little bit not exactly sure what you mean by swapping out a

justification.

I would imagine -- the Department of Homeland Security, I imagine, saw itself as justified in proceeding on both charges and there's just -- one is now preliminary enjoined and the other one wasn't invented on Friday. It's been on the books for months.

MS. DAS: Yes, Your Honor. Absolutely.

To be sure -- and this Court has made clear that First Amendment issues regarding the charge itself will require further development, and we, you know, intend to file those submissions promptly.

But with respect to detention itself, the Government has only relied on the foreign policy ground for detention and we know that because when in our bail briefing we argued, well, he's not a flight risk and danger and the Government has not contested that in these proceedings, the Government's response was that it was relying on the foreign policy ground, that this was somehow in the category of security cases where flight risk and dangerousness was unnecessary to detention.

We also know that based on the Government's letter on Friday that they are taking the position that they are now relying on the immigration application charge as the basis of his detention. So it's really the Government's actions that are bringing the detention part of this case based on the willful misrepresentation charge to the forefront.

But even if this issue has been in the case all along -- and certainly we have argued that retaliation is the goal and that it really doesn't matter which charge the Government is relying on, regardless of whether charges themselves are valid and give the Government discretion to detain an individual in removal proceedings, the First Amendment itself forbids the Government from exercising that discretion in retaliation for someone's speech and the Fifth Amendment forbids the Government from exercising that discretion to punish someone.

And given the fact that these issues have been developed in the evidence, that both sides have submitted evidence, including all the immigration filings, this issue has been teed up, and the fact that there is a strong First Amendment issue that will be litigated over the course of this case is an extraordinary circumstance such that Mr. Khalil should not be remaining in detention, having his First Amendment rights be impaired as these issues are further litigated.

THE COURT: What do you do with the argument that Mr. Sampat has made that is essentially the consequences for this petitioner of being detained are, while difficult for him undoubtedly, quite a bit like the consequences for many, many, many detainees?

And in terms of showing that they are, quote, unquote,

extraordinary as the law requires, why is this petitioner's situation any different or worse than that of many, many, many other people who are in detention who have their own collateral consequences, who have their own life disruptions?

MS. DAS: Well, Mr. Khalil's case is unique because this is a First Amendment case.

THE COURT: I've got you on that. Bracket that for half a moment if you could, but I took Mr. Sampat to be saying in the brief he filed in March on this subject that the normal extraordinary circumstance is something like a person who is very ill and at the end of their life and they can't wait for a habeas remedy because they will otherwise not make it, they need to go to a hospital or something like that, and that there's nothing like that that you all have put forward with respect to the petitioner here.

What do you do with that argument, Ms. Das?

MS. DAS: Our position in this case has been all along that both the retaliation and the punishment are the two impermissible motivations and goals behind what the Government is doing. And if he has to remain in detention only to get a victory on those claims, you know, several months from now, then the Government wins.

If the argument is, no, he should have never been detained, that they are doing this to punish him for speaking out about issues that he cares about, matters of pressing

public concern, the fact that he will have to remain in detention for those punitive or retaliatory reasons, that is the extraordinary circumstance and that his ability to live his life freely is the controversy that preceded all of this. That is the status quo to which he should be restored.

I think in this case that is not true for every non-citizen who faces detention and there are processes that are available to them in the ordinary course, but for Mr. Khalil this has never been an ordinary immigration case.

Our entire theory is that the Government is abusing the ordinary processes of immigration court of putting someone in removal proceedings, of detaining them for a constitutionally improper purpose.

And of course in Mr. Khalil's case we have alleged that there are the kinds of concerns that are extraordinary, that the loss that he's already suffered in terms of his ability to be there for the birth of his first child, to attend his graduation. These are the punitive experiences he's experienced, again, not just in the way that every person who is detained experiences them but because that is part of the punishment.

That's what makes this case extraordinary. I am aware, you know, in my 20 years of representing immigrants of no other case where the Government announced the day that it detains someone that they were detaining them in order to send

a message that their arrest would be the first of many, that they were going after student protestors.

That chilling effect has made this case an extraordinary case, and it's something that's been recognized in the small handful of cases that have emerged over the last several months that have dealt with similar issues, in the *Ozturk* case, *Concerti*, *Mahdawi*, *Aditya*, *Muhammad*, these are all cases where the First Amendment concerns, the chilling effect, the punitive effect it's having on the individuals have demonstrated extraordinary circumstances.

I certainly agree that in the Third Circuit the standard here is a very capacious one and that goes back not just to *Lucas* but to *Johnston v. Marsh*, really talking about the inherent power to grant petitioner's bail in the exercise of the judge's discretion.

I think in some of the other cases some of the extraordinary circumstances have been really discussed more as a kind of interest of justice model. Here we can see, given the extensive record, including the record on lack of a flight risk or dangerousness, of the Government never coming forward with a valid justification for why Mr. Khalil must remain detained while we litigate these very weighty issues. Those are all extraordinary circumstances that set this case apart.

I think one very illustrative case is the *Ozturk* case in many ways. It's very similar to what we are seeing here.

In her case, Ms. *Ozturk*, like Mr. Khalil, she was originally detained based on these foreign policy allegations; but in her case her student visa was revoked and ICE ultimately decided to pursue removal proceedings on the basis of the revoked visa charge alone and not the foreign policy ground.

She raised her First Amendment and due process challenges to detention. Initially the district court in Ms. Ozturk's case concluded it was too soon to consider bail, given the foreign policy allegations and the limited factual record; but after the Government declined to present any evidence to controvert Ms. Ozturk's allegations and submissions, the court granted bail and did so even when the immigration judge had denied bail.

It held that Ms. Ozturk had raised substantial claims that her detention violated First Amendment and due process and that there were several extraordinary circumstances, including the chilling effect that her detention had on her speech.

So this is a case in which those extraordinary circumstances are clear from every method that the Government has used and every decision they have made in this case to pursue Mr. Khalil's detention and their plan to remove him.

THE COURT: Ms. Das, anything else you want to add?

MS. DAS: I wanted to address the idea about waiting for immigration court bond proceedings.

I think, as the Court has already noted, there is no statutory exhaustion requirement in this case. I would also note that the 1252(d) exhaustion requirements do not apply to detention matters because there's no avenue in which detention issues ever get to a court of appeals on a petition for review because it's not --

THE COURT: Ms. Das, let me pause you there. I see the argument you're making, and on a blank slate it's not clear how to think about it. The complexity is that in *DeValle* the Third Circuit suggested that decisions on the way to a final order of removal may require a kind of common law exhaustion.

How *DeValle* might or might not play in a detention context and how *DeValle* might or might not work as to that point, as to that point, after the Supreme Court's decision in *Santos-Zacaria*, I don't know the answer to that. But that's why I presumed arguendo that prudential exhaustion is required in the circumstances; but, as you've heard, I've determined that on the facts of this case, given when the record was built, how thickly the record has been developed, how much time has been put into it, and what the record shows about flight and dangerousness, which are those same two things the immigration judge would need to look to, given all of that, I have concluded that -- even assuming arguendo that there is an exhaustion obligation under *DeValle* there is no need for exhaustion here under the factors laid out by the

United States Supreme Court in *Santos-Zacaria* in 2023.

So that's where we are on that. I mention all that at this moment, Ms. Das, because I think that if you want to tell me that there's no exhaustion in the detention -- excuse me, in the habeas bail context, you're gonna have to explain to me why *DeValle* doesn't work. I don't know if you want to do that or not, but that's the key data point here.

MS. DAS: No, Your Honor. I simply -- to the extent that there is a prudential exhaustion requirement in the detention context, our position would be that it doesn't stem from 1252. It's a prudential exhaustion requirement that may stem from general principles, and we would agree that exceptions -- normal exceptions would certainly apply here on this record, so I don't need to belabor that particular point.

We are concerned that the ordinary immigration court processes will not provide Mr. Khalil with the opportunity to protect his rights, and certainly this is a case -- and this is something that was also considered in the *Ozturk* decision -- where it's not fair that an immigration court proceeding could ever be a substitute for this Court's consideration of release since an executive branch employee would not be able to address First and Fifth Amendment issues, powerless to consider constitutional claims, and certainly it would be unusual for them to be considering evidence of the executive branch as retaliatory or punitive motives.

So it just isn't a substitute for the power that this Court has and the issues that this Court would be considering.

Fundamentally, you know, we would just ask that this Court grant Mr. Khalil bail, and, you know, we certainly believe that ordering Mr. Khalil's return to this jurisdiction in the alternative would be appropriate if the Court were not to grant bail. And I'd be happy to address any concerns the Court has about that.

But release at this stage, given the development of the record and the opportunity that both sides have had to explain why Mr. Khalil is being detained and given all of the harms that he suffered over the 104 days that he's been in detention, we hope that this Court will grant his immediate release on bail.

THE COURT: Ms. Das, thank you very much.

Mr. Sampat, over to you.

MR. SAMPAT: Thank you, Your Honor.

If I may just make a quick point on factual -- a factual point that my friend made on the other side regarding the *Ozturk* case.

THE COURT: Sure.

MR. SAMPAT: If I remember that case correctly, I don't believe Ms. Ozturk was held on the foreign policy ground. I think there was some debate as to whether she was or was not being held on that ground; but I think at the end of the day

when the Government submitted its briefing, it was the fact that she was out of status after her student visa was terminated. That was the reason that she was detained and placed into proceedings.

I wanted to make that point very quickly.

As to the extraordinary circumstances, Your Honor, I think it's important to note, at least on the Fifth Amendment issue, that the detention -- detention of aliens has been upheld by the Supreme Court as being constitutional. It's part of the process.

It's integral to determine whether somebody is -- should be found removable, is removable, and then is ultimately ordered removed. I think that's an important point to note as the Court is considering the Fifth Amendment issues.

On the First Amendment issues, I'll just note that the Court hasn't ruled on the First Amendment issues yet. Obviously my concern -- you know, the Government's concern with the argument that Mr. Khalil -- that the petitioner is posing here is that it kind of invites a magic word test where petitioners could raise First Amendment claims in habeas and then that by itself would be deemed extraordinary circumstances.

I don't think that's what the Third Circuit had in mind when it kept saying that the extraordinary circumstances

standard is a very high bar, that that high bar could be circumvented by some sort of artful pleading or coloring their claims in constitutional guard that way.

THE COURT: The problem with that -- look, I think that is potentially your real issue. And Ms. Das left out one of the key First Amendment cases in this area which is the case I believe she litigated, the *Ragbir* case, in front of the Second Circuit.

It is the case that treating First Amendment chilling as potentially a basis for extraordinary circumstances could open the door to more people seeking extraordinary circumstances, but there are two answers to that.

The first is, it is then on district judges to not simply accept magic words and be done with it.

As you know, Mr. Sampat, I previously found that the petitioner here -- I found as a matter of fact that the petitioner here engaged in, quote, unquote, political speech within the meaning of the Supreme Court's jurisprudence; and I found as a matter of fact that he wishes to and would return to such speech. So it's not simply a question of magic words.

But the other point is that the mere -- we had this back-and-forth, you and I, in our first interaction with Mr. Flentje, but the mere fact that a claim might be made under a standard is not an argument against that standard. It's just a fact of the standard, number one.

Number two, I'm not in the standard-making business. I'm in the standard-applying business. So Ms. Das's argument that First Amendment chilling is an extraordinary circumstances, that argument may work or may not, but the fact that it might doesn't tell me whether it should or should not. It's simply a restatement of the question.

Her argument is that First Amendment chilling might count as an extraordinary circumstances, and what you're saying back is, well, if it does, that would allow those claims to go forward. True, but that doesn't tell me anything. That just restates the issue.

If what it means to tell me is that people could use magic words, well, then, A, it's over to district judges to not simply accept magic words, and, B, you know the factual findings I've made here as to First Amendment speech.

I'm not sure I'm fully persuaded by the argument, at least as you've made it until now, on that particular piece.

MR. SAMPAT: I absolutely hear you, Your Honor. I would just say that, you know, if we're gonna get to the First Amendment issue, we are getting to the merits of his First Amendment claim which then goes back to our point of, like, why just extraordinary circumstances by itself can't be the standard for bail pending -- in a habeas case that needs to be likelihood of success on the merits, as well. This is how it all -- we think that it all sort of ties together.

THE COURT: I want to just say, Mr. Sampat, that's why we spent so much time discussing the standard. I appreciate that point, which is to say I have held that the petitioner has failed to develop any likely to succeed argument on anything other than the vagueness ground as to the Secretary of State's determination. And Ms. Das, 15 minutes ago, noted the petition has been verified.

But as we all understand, the petition was very belatedly verified. It was -- in Mr. Khalil's latest declaration, there was a reference in sentence two or three to: And, yes, I have gone back and verified the petition.

But the point is, in terms of the materials I've had before me in a merits-type context, I have indeed found that there is no factual evidence because at the relevant point no one had put any evidence in front of me, including no verified petition, and no meaningful legal arguments had been made.

So I have already held that there is no likelihood of success as developed by the petitioner on those things.

So I agree with you, Mr. Sampat, that the standard here matters a great deal, because if the standard requires likelihood of success on an underlying claim, as I've already held, that has simply not been shown by the petitioner to this point.

So I think you're right to say it all flows together, but that's of course why it was so important to spend time and

explain, in my judgment, why *Lucas* does not involve likelihood of success on the merits and indeed even *Mapp* doesn't. That's part of how I'm thinking about the situation that the case is currently in.

Mr. Sampat, back to you.

MR. SAMPAT: Thank you, Your Honor. If I may have just a quick moment to just consult my notes.

THE COURT: Of course, of course. Take your time.

MR. SAMPAT: Thank you.

MS. DAS: Your Honor, I don't want to interrupt Mr. Sampat, but there is a development in the immigration case that's relative.

THE COURT: Hang on for just one second. Let Mr. Sampat do his thinking and we'll get to it in a half a moment.

MS. DAS: Yes, Your Honor.

THE COURT: Thanks.

(Brief pause.)

MR. SAMPAT: Thank you, Your Honor.

I don't think we have anything else to add on the extraordinary circumstances point, other than what's in our briefing; but if Your Honor has questions, we're of course -- I'm ready to answer them.

THE COURT: Okay. No. I appreciate that.

Mr. Sampat, while you're looking at your notes, Ms. Das

had something that she wanted to bring to all of our attention.

Ms. Das, over to you.

MS. DAS: Mr. Khalil's immigration counsel just informed me that the immigration judge has just denied a bond hearing, relying on the foreign policy ground.

THE COURT: Okay.

MS. DAS: So I think that alone is an extraordinary circumstances that would be relevant both to, even if there were at the highest level, the *Landano* substantial constitutional claim that Your Honor has already found. And it goes to demonstrate that there's no administrative proceeding that will otherwise resolve this being an extraordinary circumstance.

It also appears that she's found him removable on the remaining charge and denied asylum, but we can certainly -- obviously this is coming in now. We can send a letter to the Court immediately with these developments.

THE COURT: Right. I appreciate that.

Mr. Sampat, do you know anything about any of that?

MR. SAMPAT: No, Your Honor. I'm hearing it for the first time right now.

THE COURT: I get it. If we were in court physically with nobody checking their phones, we wouldn't have known this, but here we are remotely, and at least Ms. Das had some

information. Okay.

Ms. Das, we've heard from yourself, we've heard from Mr. Sampat.

Anything else that you feel compelled to add at this point?

MS. DAS: Just briefly, Your Honor.

I would note that in addition to the verified petition much of the evidence that we referred to in our latest letter also comes from the submissions that were attached to the declaration, I believe at ECF-284, which go to the irregularities around the foreign policy ground, around the misrepresentation charge.

And certainly the fact now that it appears that the Government or at least the immigration court is not complying with this Court's injunction is another extraordinary circumstances, so we do believe that the factual record at this stage has been sufficiently developed under any standard that's applicable to bail.

THE COURT: I appreciate all that.

I want to learn more before suggesting even for a moment that anyone has not complied with the judgment order, but we'll learn more.

Ms. Das, you indicated you would file a letter, and I'm sure you and Mr. Sampat can huddle after today's proceeding just so we have a fuller understanding of what's going on with

the immigration judge and what advice is being provided to the immigration judge about the meaning of the Court's preliminary injunction.

Let me take you through my thinking as to the compliance with the relevant standards here, which is to say the standards set out in *Lucas* and subject to the full discussion we had earlier about *Landano* and about *Mapp v. Reno* and *Iuteri* and all the rest of it.

The first thing that I just want to indicate here is that there is -- you know, here is some of the evidence in the record:

That the petitioner is married to a United States citizen, that he is the parent of a child in the United States who is -- the child is itself a United States citizen, the petitioner's wife is employed in the United States, the petitioner has pursued education in the United States, has had United States career plans which may be displaced at this point. In fact, some of them were displaced, which I previously found.

In addition, the petitioner has made himself into a highly public figure from the very get-go of the case. In the first and timely verified petition, there are references to his speaking to the media, et cetera.

All of that suggests very low flight risk, connections to the United States and publicness in terms of his person.

There are any number of sources for what I have laid out. They are in the petition itself, they're in the petitioner's various declarations, they're in the petitioner's wife's, one of her declarations, one of them doesn't speak to it. It's at ECF 56-6. The first letter speaks to some of these connections to the community, but that's just a portion of it.

There is strong evidence of lack of flight risk. All of this is drawn from sworn affidavits that were put forward March 15, March 20, May 8th, June 4th by petitioner; and as to all of that, the respondents have opted not to controvert any of the evidence.

And so I find as a matter of fact that the petitioner here, based on the evidence that has been put in front of me, is not a flight risk. The respondents have opted not to controvert the evidence, as Ms. Das noted, and the uncontroverted evidence points in only one direction.

The second issue here that is relevant -- and I'll come in a moment as to how all of this is relevant -- is danger to the public, danger to the community.

Again we're in a place where the petitioner has put in sworn evidence March 15, March 20, May 8th, June 4th, and the respondents have simply opted not to take on any of this evidence. They haven't argued through affidavits, through declarations, through any other evidentiary means that the evidence put forward by the petitioner is wrong, is

unreliable.

They haven't attempted to put in their own evidence. They have done nothing of the kind. And so we're left with what the evidence that has been put forward by the petitioner that is uncontroverted shows.

That evidence shows that the petitioner has no criminal record. And there is some evidence in the record from which -- well, let me just emphasize what it is.

Exhibits 93 -- excuse me. Forgive me. ECF 93-1, that is ECF 93-1, the first letter and the third letter; ECF 56-1, ECF 56-1, letter 4, letter 7, letter 9. All of these shed evidentiary light on the petitioner's actions in what everyone assumes is the relevant context.

And the evidence that all of those -- excuse me. What all of that evidence adds up to is a lack of violence, a lack of property destruction, a lack of anything that might be characterized as incitement to violence.

All of that is simply uncontroverted here by the respondents. That evidence has been put before the Court in affidavits, in declarations, in letters that are sworn to, and the respondents have opted to say nothing in response of an evidentiary nature. And so where we are is similar to where we are, risk of flight.

All of the evidence in the record points to lack of danger to the community; that is, all evidence that has been

put on by the petitioner. It might have been challenged as unreliable, it might have been challenged as an incomplete picture, but no such challenge has been made, even as there have been many opportunities for the respondents to do that.

So what I find as a matter of fact, given the evidence before me as it's been developed by the petitioner and as the respondents have simply opted not to develop anything on the flipside, is that the evidence, I find, is that the petitioner is not a flight risk, and the evidence that has been presented to me, at least, is that he is not a danger to the community. Period. Full stop.

So, given those findings of fact, that is highly, highly unusual that in those settings the respondents and in particular the Secretary of the Department of Homeland Security would continue to seek the detention of a person in that setting.

It is of course the case that in the beginning of a proceeding there is ample room -- and the United States Supreme Court has made this clear in a set of recent opinions. There is ample room for a presumption of flight risk or a presumption of danger to justify short-term detention.

And in the first days or weeks or even beyond, the Supreme Court has made clear that that's consistent with the law. But at this point what we have is a thick record that has not been objected to by the respondents, that has not been

supplemented by the respondents, and where we are is that it's not the first day or week or month. There's been ample time to make a contrary submission if that was wanted.

So given the fact that, in my judgment, the standards for detention would clearly not be met in front of an immigration judge, it is highly, highly, highly unusual to be seeking the detention of the petitioner, given the factual record as of today.

That unusualness is amplified by the findings of fact that I made during the middle of last week, and those findings of fact were based on three declarations by seasoned, expert practitioners.

Those declarations were simply not objected to factually, they were not controverted in any way factually by the respondents, and those added up to the idea that it's overwhelming unlikely, I found, that a lawful permanent resident would be detained on the remaining available charge here -- not "available," the remaining charge here, which is to say a charge of failing to fill out accurately and honestly certain particular pieces of the LPR application, certain particular pieces of the LPR application as to things like groups, et cetera.

So where we are is that, given the evidence it is, as I said, highly unusual that there would be detention, which is to say the evidence that I have found as to flight risk and

danger. And layered on top of that is the highly unusual aspect of seeking detention and of keeping someone detained, given the background charges here and in particular the pieces of the LPL application that this lawful permanent resident did not allegedly fill out properly.

That's another factor that leans in the direction of a finding of extraordinary circumstances: evidence of no flight risk, evidence of no danger, and evidence that I have already found is that it's overwhelming unlikely that a person would be detained on the charge that is not currently enjoined.

There are a couple of other things here. One of them is that there is an extraordinary circumstance that flows in part from a chilling effect. I have found previously that this petitioner, as I alluded to with Mr. Sampat a few moments ago, that this petitioner engaged in what counts as political speech under the Supreme Court's jurisprudence and would seek to return to it in a form that is inconsistent with detention, which is to say the petitioner has engaged in protests, and that is something that is not doable from inside of custody.

So it's a kind of chilling that is not obviated, for example, by giving an interview from a detention facility or sending a communication from a detention facility.

So another part of the extraordinary circumstances calculus here is a finding of fact that I make and that I previously made that the petitioner is being prevented from

engaging in his speech and that that chilling effect is another part of the extraordinary circumstance that is here.

I also agree that another piece of the extraordinary circumstance is that part of the theory here for release would require assessment by the immigration judge of issues that the immigration judge is almost surely not legally permitted to consider, which is whether or not detention continues to be appropriate or if release is more appropriate when those kinds of questions are bottomed on alleged constitutional violations.

It's an extraordinary circumstance if the argument that might be made is one -- if the argument for release that might be made is one that the immigration judge literally cannot address. That is both an additional argument for non-exhausting remedies but it's also part of what makes this circumstance unusual.

The final thing I want to note is that while it seems to me that *Lucas* does not require any showing of some kind of substantialness to the underlying legal claim, I see of course that the law is not thickly developed in this area and that it might be that *Mapp v. Reno* at least in part is relevant; and *Mapp v. Reno* suggests there needs to be some kind of showing as to the underlying merits of the claim.

There needs to be some kind of showing that there's something to them, that they're not trivial, that they're

serious, et cetera.

I don't take *Mapp v. Reno* as suggesting they need to be likely to succeed on the merits, not at all. If I took *Mapp v. Reno* as governing, point one, and if I took *Mapp v. Reno* as requiring likelihood on the merits, point two, well, then, there could be no release here for the petitioner because, as I've already held, there has been no showing by the petitioner of likelihood of success on the merits as to the lawful permitting application charge, but that's not -- *Mapp v. Reno* is not obviously governing and that's not what *Mapp v. Reno* says. It requires some kind of substantialness but not all the way to likelihood of success on the merits.

What I would say as to the claims here, Ms. Das today invokes a First Amendment claim and a due process punishment claim. The due process punishment claim is based, as we know, on the idea -- and it's in the petition, of course. It's at pages 25 or 26 of the petition.

But the due process punishment idea is that, as the Supreme Court held in the 19th century in the *Wong* case, as it's held more recently in the *Zadvydas* case, the criminal law is for punishment, the criminal law with all of its protections.

The civil law, including immigration law -- and that's what those Supreme Court cases hold -- are not a place for punishment. They're a place for effectuating other government

interests.

One of the arguments the petitioner has made here is that he is being punished, that there is a disapproval of certain things he has said and done in the past, and that the immigration process is being used not to vindicate the immigration laws but to punish the petitioner for those things.

The petition has -- the verified petition has facts along those lines at paragraphs 33 and 73 and 82 and 83 and 84. And when you combine those facts with the current fact, which is that the petitioner -- the respondent, one of them, the Department of Homeland Security Secretary, is detaining and seeking to keep detained the petitioner in the absence -- not "in the absence," in the face of thick evidence that has not been controverted as to flight, as to dangerousness, and is keeping and seeking to keep the petitioner detained in light of strong evidence that I have found, that this is overwhelming unlikely to be the ordinary course.

All of that, the evidence that strongly suggests that there is no basis for detention here, combined with the paragraphs I've mentioned in the petition at 33 and 73 and 82 and 83 and 84, when you put all those together, they suggest that there is at least something to the underlying claim that there is an effort to use the immigration charge here to punish the petitioner, and of course that would be

unconstitutional.

There is at least enough to that claim that even if *Mapp v. Reno* were to apply here and even if there is some need to show a meaningful move in the direction of meritoriousness in the substantial claim, that part of the *Mapp v. Reno* test would be satisfied.

I do not hold that there is a likelihood of success on the merits based on what I have just said. It's a question that I don't need to reach in light of what I've said about the standard; and it's indeed a question that, as I have made clear in a prior decision, at least in the absence of all the extra things we now have would not have been made out by the petitioner.

So my finding is that there are extraordinary circumstances here. They relate to my findings on risk of flight, my finding on dangerousness to the community, my finding on the overwhelming unlikeliness the detention would be sought in a case of this sort in a context like this one, my finding as to chilling effect, my finding as to the inability of an immigration judge to take on these issues, and, finally, my finding that while it does not rise to the likelihood of success level, the claim that there is a due process violative effort to punish the petitioner is substantial enough that even if *Mapp v. Reno* is in play here, there would be enough as to that claim to justify release.

So given all of those factual findings, I'm gonna exercise the discretion that I have to order the release of the petitioner in this case.

I don't plan to write an opinion on this. I will simply issue a very brief release order, and I'll do it shortly, and refer the Court of Appeals, should there be an effort to take an appeal, back to today's transcript.

I haven't been reading from an opinion, as I'm sure you've all perceived, so things will be -- I'm sure the transcript will reflect that. But I'm hopeful that should there be an effort to seek review from the Third Circuit, this will give the Third Circuit a strong sense of my own factual findings and the basis for my exercise of discretion here as well as my decisions as to jurisdiction and exhaustion and the relevant standard.

So that's my decision, that the petitioner's motion for release will be granted and that obviates the need for consideration of the petitioner's motion to transfer.

Mr. Sampat, let me go to you for half a moment. Are there any conditions that the respondents would seek be imposed after the entry of the release order?

MR. SAMPAT: Your Honor, I think we would need time to consult with our clients on that to see what conditions would be appropriate, but what we would also ask is, understanding Your Honor's order granting the motion, we would ask that the

Court stay the effect of that order for seven days so that the respondents could seek emergency appeal and stay if so necessary.

THE COURT: Let's stick with the first one, though, Mr. Sampat.

MR. SAMPAT: Sure.

THE COURT: I would -- the question of the conditions that are imposed upon a release, they're not usually very complicated. I deal with criminal cases every single day.

They're usually about things like limits on where someone might travel to and they're usually about things like surrendering of a passport and they're usually about things like no applications for further travel documents, and that's usually the end of it.

I will also say that in my experience those things are usually pretty quickly consented to between the parties. You'll take whatever position you want, of course. I respect that entirely. But what I would just suggest is this probably doesn't take a whole lot of consultation with your client.

How long do you think you need to figure those things out?

MR. SAMPAT: Your Honor, I think it's a little difficult to say how much time we need. I'd say probably at least the rest of the day. Understanding Your Honor's point on the criminal context in criminal proceedings, the

conditions are pretty quick.

I will just note that immigration detention -- when individuals are released, there's report requirements and things like that that we would have to consult with our clients about what would be appropriate, especially in light of the fact --

THE COURT: But my point, Mr. Sampat, is not that it's easy or hard, and I hope I wasn't misunderstood that way, and if I was, my apologies.

My point is, these are high-volume affairs and they're pretty standard approaches in our country to release conditions, and so I would urge you to consult very quickly with respect to that because this is not the first time anyone has thought through these issues of what to do with a person who is released.

You know, for example, the reporting requirements you alluded to, these are pretty standard operating procedure things. So let's just -- let's pause for a moment on that.

Ms. Das, I'm imagining that you will not have any issues with -- and you'll correct me if I'm wrong. Just as with the respondents, the position is for you to formulate.

But I'm presuming you would not have issues with some reasonable geographic limitations on where the petitioner might go and the need for him to surrender his passport and to not apply for any new travel documents.

Would there be any disagreement with those things?

MS. DAS: Your Honor, we would agree to reasonable conditions in terms of travel and the issues related to the passport. I think in addition to that, we would hope that the order would specify that he should be released on his own recognizance, that there would be no electronic monitoring, and that there would be a 72-hour notice prior to re-detention.

Those are some of the grounds that were issued in other cases such as *Chung*, *Concerti*, *Mahdawi*. They had different formulations of that, but essentially to ensure that the individual could travel and would be released on recognizance without GPS monitoring were particularly important.

THE COURT: Right. So what I would say is that there has been a thick record developed here with respect to the relevant bail considerations. There is simply nothing that even begins to suggest that an electronic bracelet is appropriate or necessary.

With respect to the 72 hours before re-detention, I don't understand the basis for something like that. There may be any number of reasons why a person is detained, and I'm not gonna presume that other bases that might be put forward are somehow infirm.

The idea of enjoining the United States, slowing it down from doing something it might do when I don't know what

that thing it might do is strikes me as not grounded in the record and something that would cause real problems in terms of this Court's ability, for example, under *Lyons* and under the limits of its own injunctive power as to prospective things.

So I'm not gonna go that way, Ms. Das. I will not tell the United States that it can't proceed in certain ways. If the United States proceeds in certain ways that are illegal, we will take it from there, Ms. Das.

MS. DAS: Thank you, Your Honor. That's understood. Two quick issues.

THE COURT: Sure.

MS. DAS: With respect to the passport, in our recent experience, he may need that passport to travel back to his home in New York. So if there could be a period of time by which that has to be surrendered, that would be helpful.

THE COURT: That's exactly why I'm a little bit surprised that this seems complicated. The normal thing one would have expected would be something like limits on travel from Louisiana back to New York and surrender of passport immediately upon return to New York, something like that.

But these are the kinds of things that parties just work out between themselves. This is not the kind of thing that a judge generally gets involved in. Because while Mr. Sampat -- and I respect his position -- doesn't agree with

where I've ruled, it's not usually very tricky to fix these things between thoughtful lawyers such as yourself, Ms. Das, and such as Mr. Sampat. I'm confident you all can figure that out.

MS. DAS: Yes, Your Honor. I think that's what we've done in the normal course. If Your Honor were willing, we would ask that there be an order of his release immediately and then that release can start getting processed right away, and during that processing time we could work out with the Government if there are -- what those reasonable terms would be.

THE COURT: Mr. Sampat, what is the argument for a seven-day stay? What is that about?

MR. SAMPAT: Your Honor, that's to give us enough time to process Your Honor's order and go through the necessary channels that we need to to get authorization -- to seek whether or not an appeal is warranted; and if so, then to go through the necessary channels to get authorization to pursue that appeal, Your Honor, and then potentially seek a stay of Your Honor's order at the Third Circuit, as well.

THE COURT: Ms. Das, your view?

MS. DAS: Your Honor, we don't think a stay is warranted for the reasons that Your Honor has already made with respect to the findings. There's no risk of flight or dangerousness.

Ultimately, if the Government prevails on some sort of appeal, it has the ability to re-detain the petitioner, so there's no reason for this Court to stay its order based on the substantial findings it's already made.

THE COURT: Mr. Sampat, what is -- the standard kind of argument for a district judge to stay its own order generally runs through, among other things, the applicant for the stay, this would be you here, being irreparably injured by the non-entry of a stay.

What would be the irreparable injury here?

MR. SAMPAT: It is the release, Your Honor. Obviously we're also seeking -- we're contemplating the appeal of Your Honor's PI order, as well.

THE COURT: Sure.

MR. SAMPAT: So it's whether or not -- that irreparable injury would be the potential that Mr. Khalil would be released and we wouldn't be able to re-detain him.

THE COURT: But the problem with that argument is that, as Ms. Das has pointed out, the factual record here doesn't suggest any risk of flight. To the extent the United States had that kind of concern, well, the time for putting in evidence on that was not -- it's not today or tomorrow. It's over the course of these last days and weeks.

So if the irreparable injury is the concern that the Third Circuit will undo what I have done and you will not be

able to find and re-detain the petitioner, there's just no evidence of that. And there was ample opportunity for the respondents to build an evidentiary record that might have suggested that.

Any other irreparable injury here?

MR. SAMPAT: Nothing that I can find, Your Honor, but I'm consulting my notes, just making sure that I haven't missed anything.

THE COURT: Take your time. I don't mean to rush you.

(Brief pause.)

MR. SAMPAT: Your Honor, just a couple points on irreparable injury. There's also irreparable injury when courts do enjoin the effectuating of statutes enacted by Congress. That's *Maryland v. King* at 567 --

THE COURT: But the problem with that, Mr. Sampat, as you know, is that the Second Circuit in *Ozturk* made pretty quick work of that. I'm not enjoining any statute, far from it. I'm not saying a statute is unconstitutional, I'm not enjoining a statute, not in the slightest. I'm simply ordering that a person be granted bail.

If it were the case that every time a federal litigant loses a granular decision like a bail decision they could say there's irreparable injury, there would be nothing left to the irreparable injury standard. It would simply mean that there is a stay of a judicial decision every time a federal litigant

loses. That's not the law.

MR. SAMPAT: Nothing else to add, Your Honor. Thank you.

THE COURT: All right. So I'm going to issue a release order.

Mr. Sampat, I don't want to put you in a difficult spot in terms of consultation, but what I'm gonna do is there's a United States magistrate judge on this case who you all have dealt with a little bit, Judge Hammer, who has been working on the case and who is, like all United States magistrate judges, enormously experienced with respect to issues of where a passport will go, what travel restrictions make sense.

I'm really hopeful the parties can simply agree to reasonable restrictions here, but if need be, there will be an order releasing the petitioner by a time certain today subject to conditions that Judge Hammer can impose if the parties are not themselves able to agree to, you know, reasonable conditions together.

I think that will allow everybody to have a little bit of time for consultation, but, candidly, these are just not issues that are so terribly complex that they require a great deal more than that.

Mr. Sampat, anything that you want to add before we wrap up?

MR. SAMPAT: Not from the Government, Your Honor.

Thank you for your time this afternoon.

THE COURT: Mr. Sampat, thank you, as always.

Ms. Das, from your perspective, anything that you want to add before we wrap up?

MS. DAS: No, Your Honor. But just to clarify, I understand that some of the conditions we may need to hash out as part of the release order, but our understanding is that Your Honor would be issuing an order that he be released by a time certain today. And we're hoping that that order would specify that he would not be subject to electronic monitoring and would be allowed to travel to New York with his passport, and then any other conditions that we need to negotiate we could speak to the magistrate judge about. I just wanted to clarify that point.

THE COURT: Two things: First, I'm going to write the order. It will take a few moments to write. I haven't pre-written it or anything like that.

It will direct that the petitioner be released today, subject to the conditions that are set today by the United States magistrate judge.

It just seems, to me, pretty straightforward that you all, Ms. Das, and you, Mr. Sampat, should rapidly consult as to these issues so that the United States magistrate judge has the benefit of your thoughts on these subjects and hopefully your agreement.

I don't want to micromanage the process. There are things I don't know. For instance, I don't know if the petitioner's passport is in his pocket or is somewhere in New York. There are just things I don't know.

Those are not the kind of things that judges should take the first cut at. Those are things that you all should work together on, but the release order will be drafted shortly by me and it will hit the docket and you'll see it, Ms. Das, and Mr. Sampat, as well.

MR. SAMPAT: Thank you, Your Honor.

THE COURT: As to the stay application, it's simply denied. The stay factors are ones I understand. There's no need, I don't think, to cite them here. One of the two key stay factors -- I'm thinking, for example, of the *Hilton* case, which is the Supreme Court's case from 1987 that relates to this, and *United States v. Smith*, which is the Third Circuit's 1987 decision. The stay applicants here are the respondents and their arguments as to irreparable injury, given the factual record that's been built here, that they haven't contested, there's just not an argument to move for a stay.

I appreciate that that means that the respondents will have to work quickly to seek an appeal, should they wish to, but that is a little bit the wages of having not contested over the course of this period the record and having the record lean in one direction with respect to the relative ease

of the re-detaining issue should the Third Circuit indicate that its decision will order him detained.

I also don't think that there's been the requisite showing by the respondents as to the likelihood of success as to jurisdiction, as to exhaustion, as to the standard, as to my factual findings, and as to exercise of discretion as to detention.

So the application for a stay is denied, as we just discussed, and an order will follow shortly with respect to the granting of a motion for release.

Having said that all, Ms. Das, any final things you wanted to convey, Ms. Das?

MR. SAMPAT: No. Thank you so much, Judge.

THE COURT: Mr. Sampat, any final things that you wanted?

MR. SAMPAT: Nothing from the Government, Your Honor. Thank you.

THE COURT: Thank you all very much. And I will prepare the order in a short while. Thank you all very much. Appreciate it.

(Which were all the proceedings held in the above-entitled matter on said date.)

FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I, **Lisa A. Larsen, RPR, RMR, CRR, FCRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript from the record of proceedings in the above-entitled matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR
Official U.S. District Court Reporter ~
District of New Jersey

DATED this June 21, 2025

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